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NEW SYLLABUS

COMPANY LAW
CASE STUDY BOOK

समाधान 2.0

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AIR 2 RAKESH CHAUDHARY
AIR 3 KHUSHI MEHTA
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3 AIR Vindhya challa
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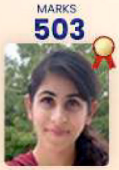

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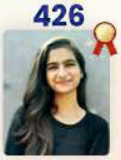

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Dil se…❤❤

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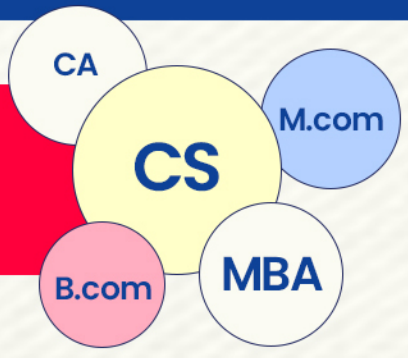

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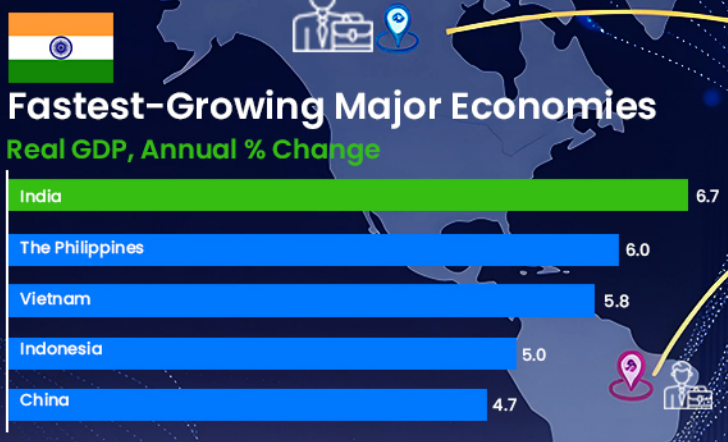

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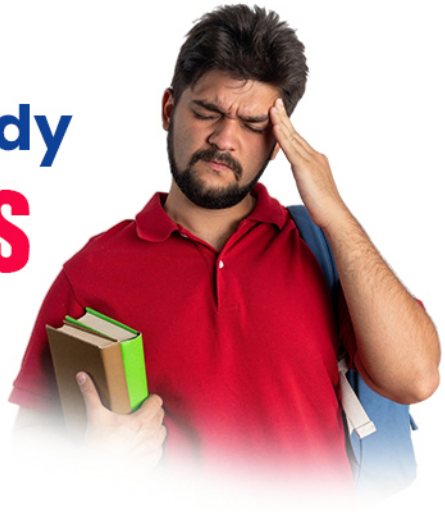

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PRESS RELEASE

Chief of Bureau **14 December 2023**

ICSI signs MoU with IMA® to enhance professional skills and competencies of its members

The ICSI signed a Memorandum of Understanding (MoU) with IMA® (Institute of Management Accountants) at the 2nd Regional Conference of Corporate CS of ICSI-SIRC, hosted by Bengaluru Chapter in Bengaluru, to foster collaborative alliances for the benefit of the members of both organizations.

Aimed at advancing the highest standards of ethics and professional conduct in members of both organizations, the MoU will promote excellence in financial management, corporate reporting, and governance.

Sharing his views, CS Manish Gupta, President The ICSI, emphatically stated that "Understanding the rising needs and expectations of the stakeholders, it is utmost important to raise the bar and continuously upgrade the professional knowledge & skills. The association with IMA will provide a collaborative platform for sharing best practices, enhancing knowledge & skills, and will open the doors to addressing various challenges faced by professionals working in the area of finance, governance and strategy".

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PART A:- COMPANY LAW – PRINCIPLES AND

Chapter 1: Introduction to Company Law

Question-1 Anil, Sunil and Vaishali are close friends from a renowned business family. After doing their masters from IIM, Ahmadabad they decided to start e-commerce in commodities. However, they were not sure about the legal format in which they should start the business. On request, M/s AB & Associates, a firm of practicing Company Secretaries advised them to form a company limited by shares being the best suitable device for running the business. After complying with the legal formalities, the company in the name and style of ''Dynamic E-Commerce Ltd.'' (hereinafter referred to as ''the Company'') was incorporated on 1st April, 2020 by seven subscribers (including Anil, Sunil and Vaishali) to the Memorandum and Articles of Association of the Company with the main object of carrying e-commerce in grains, grocery, and medicines throughout India.

The registered office of the company is situated in Pune, the State of Maharashtra (India). The capital clause of the Memorandum of Association (MOA) provides as under:

''The authorised share capital of the company shall be

1,00,00,000'' The Articles of Association (AOA) contain the

capital clause as below:

''The authorised share capital of the company shall be 1,00,00,000 divided into 8,00,000 equity shares, carrying voting rights pari-passu of 10 each and 20,000 preference shares of 10 each."

The company offered preference shares to the financial institution, its promoters, and a group of individuals on which rate of dividend shall be 10% as per the term of issue. The financial institution refused to subscribe to the issue of preference shares on the contention that MOA is ambiguous as it does not authorise the company to issue class of preference share and hence the act of offering preference shares is ultra vires the company. Considering the growing business, the company wants to shift its registered office from Pune to Mumbai in the State of Maharashtra (India). The Managing Director of the company has been apprised by the Legal Officer that the company may shift its registered office, as proposed, by passing a unanimous board resolution and filing necessary forms with the Registrar of Companies.

Encouraged with the financial results of last three years the Board of directors of the company intends to declare interim dividend for the first time in its next board meeting to be held on 31st May, 2023 out of the profit earned for the year 2022-23. The balances extracted from the financial statement for the preceding year are as below:

Particulars	*Financial Results for theyear ending 31st March, 2023 (₹ in lakh)*
Net Profit for the year after depreciation but before interest and tax (NPBIT)	*80.00*
Charges of Interest on the profit on term loan	*5.00*
Fully Paid-up equity share capital	*60.00*
Fully Paid-up Preference share capital	*16.00*
Free Reserves	*10.00*
Term Loan	*50.00*
Contingent Liabilities for which profit is to be set aside	*24.65*

Assume Income-tax provision @ 25%

Based on the above facts answer the following:

(a) Whether the contention of the financial institution in refusing to subscribe to the issue of preference shares of the company is valid? Dec 2023 2022 Syllabus (5 marks)

Answer-1 Doctrine of Ultra vires: Any activity done contrary to or in excess of the scope of activity of the Companies Act, Memorandum of Association or Articles of Association will be ultra vires. Ultra vires activities can be divided into the following three divisions:

Ultra Vires the Companies Act: Any act done contrary to or in excess of the scope of activity of the Companies Act will be ultra vires the Companies Act. Such an act is void and cannot be ratified even by unanimous resolution of all the shareholders. Further, a provision contained in the memorandum, articles, agreement, or resolution shall be void if it's repugnant to any of the provisions in the Act.

Ultra Vires the Memorandum of Association: In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires. As a result, an act which is ultra vires is void, and does not bind the company. Neither the company nor the contracting party can sue on it. Such an act is void and cannot be ratified even by unanimous resolution of all the shareholders. Ultra Vires the Articles of Association: If the acts of a company are ultra vires the Articles of Association but intra vires the memorandum of association (i.e., outside the scope of articles but within the powers conferred by the memorandum), it will be ultra vires the Articles of Association. These acts are also void, but the company in general meeting may alter the Articles by a special resolution and ratify the unauthorized acts.

Validity of contention of the bank: In Re. South Durham Brewery Company [(1875) LR 7 HL 65c], the MOA of the company was unclear as to the classes of shares to be issued by it, but the AOA of the company gave power to issue shares of different classes as described therein. The Hon'ble Court held that Articles can be used to explain the ambiguity contained in the memorandum. "... their Lordships agree that in such cases the two documents must be read together at all events so far as may be necessary to explain any ambiguity appearing in the terms of the memorandum, or to supplement it upon any matter as to which it is silent."

Hence, the act of offering the preference shares is not ultra vires the Companies Act, the MOA or AOA of the company and the contention of the bank to refuse it is not valid in light of the explanation and case law cited above.

Question-2

(i) Gracious Housing Finance Company Ltd. is a subsidiary of listed company in India. The following information is extracted from the audited accounts of the company as on 31st March, 2024:

(₹ in crore)

Particulars	Amount
Paid up capital	10
Reserves and surplus	1
Secured loan	0.20
Turnover	200

You have recently joined the company as General Manager (Secretarial) and Subir, Junior Officer (Accounts) has approached you if accounts are to be submitted under XBRL mode. Advise Subir.

Answer-2 In terms of Rule 3 of Companies (Filing of Documents & Forms in XBRL) Rules, 2015 the Government has mandated certain classes of companies to file financial statements in XBRL mode using XBRL taxonomies. The following classes of companies have to file financial statements in XBRL form:

(i) all companies listed with any Stock exchange(s) in India and their Indian subsidiaries; or
(ii) all companies having a paid-up capital of `5 crore and above; or
(iii) all companies having a turnover more than `100 crores and above; or
(iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.

However, banking companies, insurance companies, housing finance and non-banking financial companies have been exempted from XBRL filing.

The company is not required to file its financial statements for the year ended 31st March, 2024 through XBRL mode as it is a housing finance company and is exempted from application of the provisions. The Junior Officer (Accounts) has to be advised accordingly.

Question-3 Madhuri, famous singer, was a rich woman in her late twenties. She enjoyed huge dividend and interest income from various sources. She formed three private companies and agreed with each to hold a block of investment as an agent for it. Income received was credited in the accounts of the company. The company handed back the amount to her as a loan in disguise. Consequently, she divided her income in three parts and discharged tax liability accordingly. Comment if there is any illegality in the above in reference to fundamental concepts of company formation. June 2024 2017 Syllabus (3 marks)

Answer-3

FACTS:

- Madhuri, a wealthy and well-known singer, received substantial dividend and interest income.
- She formed three private companies, and entered into an arrangement with each to hold a block of investment as an agent.
- The income was credited to these companies, which in turn handed back the income to her as disguised loans.
- As a result, she split her personal income among the three companies, thereby reducing her overall tax liability.

PROVISIONS:

The issue in question relates to the lifting of the corporate veil under judicial interpretations. Normally Courts are reluctant or very cautious about the lifting of the veil of corporate personality to see the real persons behind it. The facts of the case are that Madhuri, a famous singer, was a rich woman enjoying large dividends and interest income. She formed three private companies and agreed with each to hold a block of investment as an agent for it. The Income received was credited in the accounts of the company but the company handed back the amount to her as a loan in disguise. This way she divided her income in three parts in a bid to reduce her tax liability. It was held the company was formed by the person purely and simply as a means of avoiding tax and the company was nothing more than the person/assessee

herself. It did no business, but was created simply as a legal entity to ostensibly receive the dividends and interests and to hand them over to the assessee as pretended loans. The Court decided to disregard the corporate entity and ascertain the real persons behind as it was being used for tax evasion (Re. Sir Dinshaw Maneckjee Petit, A.I.R. 1927 Bombay 371). Thus, on the basis of the above, it can be concluded

that formation of Company to reduce tax liability is illegal in reference to fundamental concepts of company formation.

CONCLUSION:

- The companies formed by Madhuri had no independent business purpose.
- They were merely used to channel her income back to her as disguised loans, for the sole objective of evading tax.
- This constitutes misuse of the corporate form and is contrary to the fundamental principles of company law.

 Therefore, the formation of companies solely to reduce tax liability, as done by Madhuri, is considered illegal and a ground for lifting the corporate veil.
The court may ignore the separate legal entity of these companies and treat the income as taxable in the hands of Madhuri directly.

Question-4 The Assistant Registrar of Companies examined e-form AOC-4 filed by Northern Private Ltd. and found it to be incomplete, defective. Therefore, he intimated the company to furnish further information/rectification of defects by allowing fourteen days' time. Is the action of Assistant Registrar acceptable? Specify the e-form in which the additional information will be furnished by the company. What will happen, if even after furnishing the required information, the Registrar rejects the e-form or treats the same as invalid? June 2024 2017 Syllabus (3 marks)

Answer-4 As per Rule 10 (3) of Companies (Registration Offices and Fees) Rules, 2014 Except as otherwise provided in the Act the Registrar shall allow fifteen days' time to the person or company which has filed the application or e-form or document for furnishing further information or for rectification of the defects or incompleteness or for re-submission of such application or e- form or document.

In line with the above, the action of Assistant Registrar of Companies by giving fourteen days' time for furnishing further information or rectification of defects is not acceptable.

The e-form in which additional information is to be furnished by the company is GNL- 4.

In the case, where further information called for has not been provided or has been furnished partially or defects or incompleteness is not rectified or rectified partially within the period allowed, the Registrar shall either reject or treat the application or e-form or document as invalid. Consequently, the document may be rectified by the person or company only by fresh filing along with payment of fee and additional fee as applicable at the time of fresh filing without prejudice to any other liability under the Act.

Question-5 Sunrise Online Coaching Limited (the company) is registered in Singapore. It has no place of business established in India, however, it is conducting online educational courses and providing online tutorials and coaching for various courses by charging fee for Indian students who have joined the courses online from India. The registered office is situated at Singapore and having its main server for online coaching outside India. State the status of the company under the provisions of the Companies Act, 2013. June 2024 2022 Syllabus (3 marks)

Answer-5 Under section 2 (42) of the Act, "Foreign Company" means any

company or body corporate incorporated outside India. which,
(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

According to Rule 2(l)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014. "Electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to online services such as telemarketing, telecommuting, telemedicine, education, and information research.
In the above case, Sunrise Online Coaching Limited is a company registered in Singapore. It has no place of business established in India but is doing online business through electronic mode in India having its main server for online business outside India.
As per the definition of "Electronic Mode", the Company incorporated outside India, conducting business in India through electronic mode whether main server is installed in India or not, the company will be treated as a foreign company.

Question-6 Explain the concept of ''Indoor Management" with exception of forgery and negligence as per the provisions of the Companies Act, 2013. June 2024 2022 Syllabus (5 marks)

Answer-6
While the doctrine of, "constructive notice" seeks to protect the company against the outsiders, the principal of "indoor management" operates to protect the outsiders against the company.
This doctrine emphasizes on the concept that an outsider whose actions are in good faith and has entered into a transaction with a company can have a presumption that there are no irregularities internally and all the procedural requirements have been complied with by the company. The doctrine of indoor management, also known as the Turquand rule is about one fifty years old, which protects outsiders against the actions done by the company.

Section 176 of the Companies Act, 2013 provides for the validity of acts of Directors - No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the Articles of the company; Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or have been terminated.

The object of the section is to protect persons dealing with the company - outsiders as well as members by providing that the acts of a person acting as director will be treated as valid although it may afterwards be discovered that his appointment was invalid or that it had terminated under any provision of this Act or the Articles of the company [Ram Raghubir Lal v. United Refineries (Burma) Ltd., (1932) 2 Com Cases 359; AIR 1931 Rang 139.

Exceptions: Forgery − The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal ab initio. Negligence − The 'doctrine of indoor management', in no way, rewards those who behave negligently. Thus, where an officer of a company does something which shall not ordinarily be within his powers, the person dealing with him must make proper enquiries and satisfy himself as to the officer's authority. If he fails to make an

enquiry, he is estopped from relying on the Rule.

Question-7 Suresh has done his MBA from a reputed Institution of Management and wants to incorporate a private or public company to start e-commerce business in various daily need products. Explain him the distinctions between these two types of companies referring to the provisions of the Companies Act, 2013. June 2024 2022 Syllabus (5 marks)

Answer-7

Following are the main points of distinction between a private company and a public company with specific reference to the Companies Act, 2013

1. Minimum Number of Members:
   In case of a private company, the minimum number of persons to form a company are two, while it is seven in the case of public company. (Section 3)
2. Maximum number of Members:
   In case of private company. the maximum number of members shall not exceed two hundred, whereas there is no such restriction on the maximum number of members in the case of a public company.
3. Transferability of Shares:
   As per section 44 of the Companies, Act, 2013, the shares of any member in a company shall be movable property and transferrable in the manner provided by the Articles of Association of the company. In a private company, by its very definition, Article of Association of a private company must contain restrictions on transferability of shares.
4. Prospectus:
   A private company cannot issue a prospectus, the Act prohibits any invitation to the public to subscribe for any securities of the company. while a public company may, through prospectus, invite the public to subscribe for its securities. {Section 2(68)}
5. Minimum numbers of Directors:
   A private company must have at least two directors on Board, whereas a public company must have at least three directors on Board. (Section 149)
6. Retirement of Directors:
   Directors of a private company are not required to retire by rotation, but in case of a public company at least 2/3rd of the directors must be such whose period of office is subject to retirement by rotation. (Section 152)
7. Quorum for General Meetings:
   Unless the Articles of Association of the company provide for a larger number, in case of public company the quorum for general meetings shall be:
   i. five members personally present if the number of members as on the date of meeting is not more than one thousand.
   ii. fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand.
   iii. thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.

In case of a private company, unless Articles of Association provide for a higher number, two members personally present. shall be quorum for a meeting of the company

Question-8 Explain in brief the justification and advantages laid down in the Rule in Foss v Harbottle case law under the provisions of the Companies Act, 2013. Dec 2024 2017 Syllabus (3 marks)

Answer-8 Justification: The justification for the rule laid down in Foss v Harbottle 67 E.R 189; (1843) 2 Hare 461 can be summarized as follows- the will of the majority prevails. The Rule preserves the right of the majority to run the company as per the wish of the majority.

Generally, if any wrong is done to the company, the company being a juristic person

capable of suing and being sued, it is the company itself that can seek redressal from the appropriate legal forum and not an individual shareholder.
Advantages: The main advantage of the principles enunciated in the Foss v Harbottle case law are:
a) Recognition of the separate personality of the company

b) Need to preserve the right of majority to decide how the affairs of the company shall be conducted
c) Avoiding multiple suits by minority shareholders for petty grievances - real or imaginary
d) Futile litigation by minority if the irregularity complained of can be subsequently ratified by the majority shareholders.

Question-9 Beauty Cosmetics, a company incorporated in Korea has established its branch office in Chennai for conducting its business in India. The structure of paid-up share capital of Beauty Cosmetics as at 31st March 2024 is as below:
The company does not have any Preference Share Capital. Equity share capital held by Mr. L, an Indian citizen: 10% Equity share capital held by Mr. R, an Indian Citizen: 20%
Equity share capital held by Fairness Cosmetics Limited, an Indian company: 20%
You being a Chartered Accountant are asked to explain with reference to the provisions of the Companies Act, 2013:
(i) Whether Beauty Cosmetics shall be deemed to be a Foreign Company or an Indian Company for the business carried on by it in India, and
(ii) for the business carried on by it in India, will it be required to comply with the relevant provisions of the Companies Act, 2013 as if it is an Indian Company? (5 Marks)

Answer-9
(i) Whether Beauty Cosmetics shall be deemed to be a foreign company or an Indian company? As per section 2(42) of the Companies Act, 2013, a 'foreign company' means any company or a body corporate incorporated outside India which has:
a. a place of business in India whether by itself or through an agent physically or through electronic mode and
b. conducts any business activity in India in any other manner.

In the given question, Beauty Cosmetics, a Korean company has established a place of business in India (branch office in Chennai) and also carries on the business in India. Hence, Beauty Cosmetics shall be deemed to be a foreign company under the Companies Act, 2013 for the business carried on by it in India.
Further, according to section 379(2) of the Companies Act, 2013, where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company incorporated outside India is held by:
i. one or more citizens of India; or
ii. by one or more companies or bodies corporate incorporated in India; or
iii. by one or more citizens of India and one or more companies or bodies corporate incorporated in India,

whether singly or in the aggregate, such foreign company shall also comply with the provisions of Chapter XXII and other prescribed provisions of the Companies Act, 2013, with regard to the business carried on by it in India as if it were a company incorporated in India.
In the given question, 50% (10% + 20% + 20%) of the share capital of Beauty Cosmetics (incorporated in Korea) is held by Mr. L (Indian Citizen), Mr. R (Indian Citizen) and Fairness Cosmetics Limited (Indian Company) respectively.
Hence, Beauty Cosmetics shall be deemed to an Indian company for the business carried on by it in India.

(ii) Whether Beauty Cosmetics, for the business carried on by it in India, be required

to comply with the provisions of the Act?

Since, Beauty Cosmetics shall be deemed to an Indian company for the business carried on by it in India, it is required to comply with the relevant provisions of the Companies Act, 2013, as if it

is an Indian company.

Question-10 Silk Segment Private Ltd. (SSPL) is a wholly owned subsidiary of Silk Block Ltd. (SBL) a listed public limited company. The Board of Directors of Silk Segment Private Ltd. have collectively decided upon the proposal to grant loans of ` 15,00,000 and ` 20,00,000 to Mr. Sohan and Ms. Subarna respectively for the purchase of fully paid-up shares in Silk Segment Private Ltd.
Mr. Sohan is the Deputy Marketing Manager of Silk Segment Private Ltd. with a monthly salary of ` 1,00,000; whereas Ms. Subarna, a qualified Chartered Accountant, is the Chief Financial Officer of Silk Segment Private Ltd. with a monthly salary of ` 2,00,000.
In view of provisions of the Companies Act, 2013, decide:
(i) Whether the proposed loans to Mr. Sohan as well as Ms. Subarna can be disbursed by the company keeping in view that Silk Segment is a private limited company?
(ii) Whether the answer would be different in case only 25% shares of SSPL are held by SBL?

Answer-10
(i) According to section 2(71) of the Companies Act, 2013, (the Act) a Public Company means a company which—
(a) is not a Private Company; and
(b) has a minimum paid-up share capital as may be prescribed:
Provided that, a company which is a subsidiary of a company, not being a private company, shall be deemed to be a public company for the purposes of this Act even where such subsidiary company continues to be a private company in its Articles.
As per section 2(51) of the Act, Key Managerial Personnel (KMP), in relation to a company, includes the Chief Financial Officer.
According to section 67(2) of the Companies Act, 2013, Public Company shall not give any financial assistance:

1. Whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise.
2. For the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

As per section 67(3) of the Act, a company may provide the financial assistance, in case of lending money by a company to its employees (other than its directors or key managerial personnel), not exceeding six-month salary of the employees to enable them to buy or subscribe fully paid shares in the company or its holding company and to hold them by way of beneficial ownership.
In the given question, Silk Segment Private Ltd. (SSPL) is a wholly owned subsidiary of Silk Block Ltd. (SBL). Thus, SSPL will also be deemed as a public company [by virtue of Section 2(71)].
Hence, considering the above provisions we can answer the following to the questions asked:

(i) Mr. Sohan is the Deputy Marketing Manager of SSPL; hence loan may be provided to him upto the limit of his 6 months' salary i.e. ` 6,00,000. Thus, proposal to grant loan of ` 15,00,000 to Mr. Sohan for purchase of shares in SBL is not valid.
Ms. Subarna is a KMP (being the Chief Financial Officer of SSPL), hence, proposal to grant loan to her for purchase of shares in SBL is not valid.

(ii) Section 67 of the Act shall not apply to private companies in whose share capital no other body corporate has invested any money. In case where Silk Block Ltd. (SBL)

held only 25% shares of Silk Segment Private Ltd. (SSPL), the latter would not be termed as a subsidiary of the former and hence would not be a deemed public company. It will still be regarded as a private limited company. Further, SBL is holding shares in SSPL, thus SSPL will not fall in the exempted class

of private companies and accordingly, the provision of section 67(3) of the Companies Act, 2013 shall apply.
In view of the above provisions, the answer would remain the same in case only 25% shares of SSPL are held by SBL.

Question-11 Based on the applicable provisions of the Companies Act, 2013, define the term "foreign company" and identify which among the following companies can be categorized as a foreign company:

Sl. No.	Place of Incorporation	Registered	Additional information
1	Singapore	Singapore	Developed patient's database for a hospital in Mumbai, India, server in Singapore.
2	UAE	UAE	No place of business in India but employs agents in India.
3	Cape Town	Cape Town	Board Meeting held in Leh, India.
4	Germany	Germany	49% of the shares held by an Indian company.

Answer-11
As per section 2(42) of the Companies Act, 2013 (the Act), “Foreign Company” means any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner.
So, as per the definition, we can conclude:
Case 1: Place of Incorporation – Singapore. Developed patient’s database for a Hospital in Mumbai – Server at Singapore.
It is a Foreign Company.
Though incorporated outside India, it is involved in transacting business in India and having place of business through electronic mode. Hence, it is a foreign company.
Case 2: Place of Incorporation – UAE. No place of business in India, but employs agents in India. It is not a foreign company.
Since the company, though employed agents in India, but has no place of business in India. Hence, it is not a foreign company.
Case 3: Place of Incorporation and Registered Office – Cape Town; Board Meeting held in Leh, India.
It is not a foreign company.
Mere holding of meetings in India cannot be termed as conducting business activity in India. Hence, it is not a foreign company.
Case 4: Place of Incorporation and Registered Office – Germany; 49% shares are held by an Indian Company.
As per the question, the company is registered in Germany and no information is available about any business(es) being carried on by the company in India which is a basic condition to be fulfilled for being called a foreign company. Under the circumstances, it is just a company incorporated outside India and shall not be considered as a foreign company.

Alternate Answer

Applying the provisions of section 379 (2) of the Companies Act, 2013, if not less than 50% of the shareholding of a foreign company is held by an Indian Company; it is treated as an Indian Company, on which provisions of Chapter XXII of the Companies Act, 2013 applies. Here, only 49 % is held by Indian Company. Hence it is a foreign company.

Question-12 Define the term 'person' as per the General Clauses Act, 1897.
Discuss which of the following will be treated as a person:
(i) An idol
(ii) A public body
(iii) A company

Answer-12
Definition of the term “Person”
As per section 3(42) of the General Clauses Act, 1897, “Person” shall include:
- any company, or
- an association, or
- body of individuals, whether incorporated
or not. From the above definition, we can
conclude:
(i) An Idol: An idol is a juristic person. A juristic person is a legal entity with a legal personality that is recognized by law. Hence, an idol is a person.
(ii) A Public Body: A public body to be a person need not always be set-up by the statute. It may be set-up by the Government by exercising its executive function. A public body is a legal entity and is treated as a "person."
(iii) A Company: The definition of person includes a company. Thus, a company is a person.

UNIQUE ACADEMY FOR COMMERCE

Chapter 2: Legal status and Types of registered companies

Question-1 Explain the exceptions, if any to the principle of ''Limited Liability'' under the Companies Act, 2013. Dec 2023 2017 Syllabus (5 marks)

Answer-1 Exceptions to the principle of "Limited Liability" are as under-

- If at any time the number of member of a company is reduced, in the case of a public company, below seven ,in the case of private company, below two and company carries on business for more than six months while the number of member is also reduced, every member of the company during the time that it so carries on business after the those six months and is cognizant of the fact that it is carrying on business with less than seven or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefore. [Section 3A of the Companies Act, 2013]
- When the company is incorporated as an Unlimited Company under section 3(2)(c) of the Act.
- Where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, direct that liability of the members of such company shall be unlimited. [Section 7(7)(b)]
- Where in the course of winding up it appears that any business of the company has been carried on with an intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal may declare the persons who were knowingly parties to the carrying on of the business in the manner aforesaid as personally liable, without limitation of liability, for all or any of the debts/liabilities of the company. [Section 339]
- Where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person who was director at the time of issue of prospectus or has been named as a director in the prospectus or every person who has authorized the issue of prospectus or every promoter or a person referred to as an expert in the prospectus shall be personally liable, without any limitation of liability, for all or any of the losses or damaged that may have been incurred by any person who subscribed to the securities on the basis of such prospectus. [Section 35(3)]
- Where a company fails to repay deposit or part thereof or any interest thereon referred in section 74 within the time specified or further time as may be allowed by the Tribunal and it is proved that deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible, without any limitation of liability, for all or any of the losses or damaged that may have been incurred by the depositors. [(Section 75(1)]
- Where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in form of any asset, property or cash or in any other manner, the Central Government may file an application before Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for

holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability. [Section 224(5)]

Question-2 Authorised, issued and paid-up share capital of XYZ Ltd., is Rs. 499 crore divided into Rs. 49.90 crore shares of 10 each. 74% of shares of XYZ Ltd. is held by Central Government, and the balance shares are held by the retail investors. The date of incorporation of XYZ Ltd. is 1st April, 2023. First Auditor of XYZ Ltd. is appointed on 16th May, 2023. As a Company Secretary,

examine the validity of appointment of first auditor in XYZ Ltd. In light of the provisions of the Companies Act, 2013. Dec 2023 2017 Syllabus (3 marks)

Answer-2 The appointment of auditor of Government Company or Government controlled (directly or indirectly) company shall be held in accordance with the provision of section 139(5) and (7) of the Companies Act, 2013.The First auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint within next 30 days and on failure to do so by the Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extra ordinary general meeting (EGM), who shall hold office till the conclusion of the first annual general meeting.

74% of shares of XYZ Ltd, is held by Central Government, thus XYZ Ltd., will be a Government Company. First auditor of XYZ Ltd is appointed on 16th May 2023, i.e., within 60 days from the date of incorporation i.e., 1st April 2023.

The appointment of first auditor of XYZ Ltd., is valid and within the time specified under the provisions of the Companies Act, 2023.

Question-3 Vibgyor Ltd. had closed its register of members in May 2023 and July 2023 for fourteen days and sixteen days respectively. Prakash, HOD (Finance) of the company has informed Pritam, Company Secretary to consider closing the register in November for another twenty days for some corporate restructuring events. You are informed that Vibgyor Ltd. is a listed company. Decide the validity of such a proposition under Companies Act, 2013. June 2024 2017 Syllabus (3 marks)

Answer-3

FACTS:

- Vibgyor Ltd. is a listed company.
- It closed its register of members:
  - For 14 days in May 2023,
  - For 16 days in July 2023, and
  - There is a proposal to close it again for 20 days in November 2023.
- The Head of Finance (Prakash) has suggested this third closure for corporate restructuring purposes.

PROVISIONS:

According to section 91(1) of Companies Act, 2013 a company may close the register of members or register of debenture holders or register of other security holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time. A previous notice of at least seven days or such lesser period as may be specified by SEBI is to be given by a listed company.
In the case given in question Vibgyor Ltd. has closed its register of members for 14 and 16 days in May and July 2023 respectively. Therefore, the closure is within the time limits prescribed in section 91(1) as each closure has not exceeded 30 days.

CONCLUSION:

- Vibgyor Ltd. has already closed its register for a total of 30 days (14 + 16).
- If it proceeds with the proposed 20-day closure in November, the aggregate

closure for the year 2023 will be 50 days, which exceeds the statutory limit of 45 days per year.

Hence, the proposal of Prakash, HOD (Finance) of the company, is not valid under the Companies Act, 2013
The Company Secretary (Pritam) should advise **against** proceeding with this proposal to ensure compliance.

Question-4 S Ltd. has equity shares with voting rights that are pari passu. X Ltd., Y Ltd., and Z Ltd. each hold 20% of the equity shares in S Ltd. The remaining 40% of the shares are held by retail investors. R Ltd. controls the composition of the Board of Directors of X Ltd., Y Ltd., and Z Ltd. Based on the provisions of the Companies Act, 2013, determine whether R Ltd. qualifies as a holding company of S Ltd. Dec 2024 2022 Syllabus (3 marks)

Answer-4

FACTS:

- S Ltd. has equity shares with pari passu voting rights.
- X Ltd., Y Ltd., and Z Ltd. each hold 20% equity shares in S Ltd., aggregating to 60% voting power.
- The remaining 40% is held by retail investors.
- R Ltd. controls the composition of the Board of Directors of X Ltd., Y Ltd., and Z Ltd.

PROVISIONS:

As per Section 2(87) the Companies Act, 2013 a "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company –
(i) Controls the composition of the Board of Directors; or
(ii) Exercises or controls more than one half of the total voting power either at its own or together with one or more of its subsidiary companies.
Explanation: For the purposes of this clause –
(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company; (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
(c) the expression "company" includes anybody corporate;
(d) "layer" in relation to a holding company means its subsidiary or subsidiaries.

CONCLUSION:

- R Ltd. controls the Board composition of X Ltd., Y Ltd., and Z Ltd., so these three companies are subsidiaries of R Ltd.
- Collectively, these subsidiaries hold 60% voting power in S Ltd.
- Since R Ltd. exercises indirect control of more than half of the total voting power in S Ltd. through its subsidiaries, R Ltd. is deemed to exercise control over S Ltd. under Section 2(87).

 Hence, R Ltd. qualifies as a *holding company* of S Ltd. under the Companies Act, 2013.

UNIQUE ACADEMY FOR COMMERCE

Chapter 3: Memorandum and articles of association and its alteration

Question-1 Referring to the provisions of the Companies Act, 2013 advise the company of the compliance requirement for shifting of its registered office from Pune to Mumbai. Dec 2023 2022 Syllabus (5 marks)

Answer-1 In the instant case the change in registered office of the company shall be within the same state but from the jurisdiction of ROC, Pune to the jurisdiction of ROC, Mumbai.

As per section 12(5) of the Companies Act, 2013 read with rule 28 of the Companies (Incorporation) Rules, 2014, no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company. {Proviso to Section 12(5)}

Thereafter, the Regional Director shall examine the application and the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of application complete in all respects. The certified copy of order of the Regional Director, approving the alternation of memorandum for transfer of registered office company within the same State, shall be filed in Form No.INC-28 along with fee with the Registrar of State within thirty days from the date of receipt of certified copy of the order.

Under rule 28 of the Companies (Incorporation) Rules 2014, application shall be made to the Regional Director in Form No.INC.23 along with the fee and following documents shall be furnished:

a. Board Resolution for shifting of registered office;
b. Special Resolution of the members of the company approving the shifting of registered office;
c. a declaration given by the Key Managerial Personnel or any two directors authorized by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof;
d. a declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending;
e. acknowledged copy of intimation to the Chief Secretary of the state as to the proposed shifting and that the employees' interest is not adversely affected consequent to proposed shifting.

Accordingly, the company may shift its registered office from Pune to Mumbai only after passing Board resolution and a special resolution in the general meeting, obtaining confirmation order of the Regional Director and complying with the other procedural requirements. Hence, the advice of the legal officer is not correct.

As per rule 12(6) the confirmation referred to in sub-section (5) shall be

communicated within a period of thirty days from the date of receipt of application by the Regional Director to the company and the company shall file the confirmation with the Registrar within a period of sixty days of the

date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.

Question-2 Ankur Steel Limited is a manufacturer of stainless steel. It had raised 400 crores through public issue of its equity shares for starting one more unit of steel manufacturing in Odisha. It has utilized 100 crores. Due to reduction in customs duty on import of steel, imported steel from China are cheaper than its own manufacturing. Since there is no scope for growth and expansion in the existing business, management of the Company thought of utilizing remaining amount in software development business (including Artificial Intelligence) by adding a new object in the Company's its memorandum of association. As per the provisions of the Companies Act, 2013 can it do so? If no, what advise will you give to the company? If yes, then explain the various steps to be followed by the company. Dec 2023 2022 Syllabus (5 marks)

Answer-2 According to Section 13(8) of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and —

i. The details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change.
ii. The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations.

As per section 13(9), the Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with section 13(6)(a).
Therefore, the company will have to file copy of special resolution with ROC and ROC will certify the registration within a period of thirty days. As per section 13(10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.
Thus, keeping in view the above provisions, yes, the company can add the object of software development business in its memorandum and utilize the available funds for the new business. However, it will have to comply with above requirements.

Question-3 Referring to the provisions of the Companies Act, 2013 explain the managing director of ATR Ltd. the formalities to be completed before and after shifting of the registered office clarifying whether the approval of members of the company through a special resolution is required for it. June 2024 2022 Syllabus (3 marks)

Answer-3 ATR Ltd. is shifting its registered office within the local limits of same town/city. Hence, the following procedure / formalities to be completed:
Before shifting:
Before shifting of the registered office, the Board resolution in the meeting of Board of directors will have to be passed authorizing the director to shift the registered office to the new place.

After shifting:
An intimation of the change of registered office and verification of registered address shall be given to the Registrar.

- E-Form INC-22 is required to be filed within 30 days of such change. It is further be clarified that this change does not involve alteration of memorandum and the change is within the local limits of the same city. Hence, the Board is the competent authority to change the

situation of the registered office of the company and approval of the members of the company is not required.

Question-4 Case Study: Background: Lalit, Bisen, Roma, Raunak, and Rasik, a practicing company secretary, have formed a brainstorming group to discuss, deliberate, and resolve various issues they encounter in their daily works related to company law. They decided to meet every Sundary evening to share their views on issues brought before the group. Several meetings have taken place, and the important issues discussed in detail are outlined below:

(i) Change in the name of the company and issues connected therewith:
Lalit began the discussion by informing the group that his client, Roopam Leathers Limited (the Company), changed its name to Rakshak Leathers Limited in January 2024, following the due process of law. Before this change, the company had filed a suit against one of its suppliers in May 2023 to recover compensation due to a breach of contract. However, in April 2024, the supplier applied to the Court for dismissal of the suit, arguing that Roopam Leathers Limited ceased to exist after the name change and the issuance of a new certificate of incorporation by the Registrar. The Managing Director of the Company has expressed concern about the fate of the litigation against the supplier.
Explain the effect of the change in the company's name and advise the Managing Director on whether the Supplier's application for dismissal of the case is tenable. Dec 2024 2022 Syllabus (3 marks)

Answer-4 Effect of Change in Name Clause
The change of name shall not affect any rights or obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings which might have been continued or commenced by or against the company in its former name may be continued by or against the company in its new name. By change of name, constitution of company does not change, the only thing change is its name, all the rights and obligations under the law of old company pass to the new company.

Case Laws:
It was held in the case of Re Malhati Tea Syndicate Ltd. v. Revenue Officer, (1973) 43 Com Cases that where a company changes its name and the new name has been registered by the Registrar, the commencing of legal proceedings in the former name is not valid. In Re Pioneer Protective Glass Fibre (P) Ltd. v. Fibre Glass Pilkington Ltd., (1986) 60 Com Cases 707 (Cal) it was held that inspite of a change in name the entity of the company continues. The company is not dissolved or does any new company come into existence. If any legal proceeding is commenced, after change in the name, against the company in its old name, the company should be treated as if it is not in existence. It is not an incurable defect and the plaint can be amended to substitute the new name. Considering the above points, the contention of the supplier that the company is ceased to be in existence after change of name is not correct. Hence, the application filed by him for dismissal of the case shall not be tenable. However, the case will continue with its new name.

Question-5 BBQ Ltd., with its registered office in Hyderabad, has two branch offices, one located in Delhi and the other in London. The accounting transactions of the branches are recorded and all books of account are maintained in the branches. The branch accountant of the Delhi branch sent monthly and the branch accountant of

London sent quarterly summarized trial balance, profits and loss account and balance sheet to the Hyderabad office. One of the assistants of the audit team, Mr. Naveen, raised the issue that the branches of the company maintain its books and records at branches, so it defaults on not maintaining the proper books of account at the

registered office. Mr. Naveen further objected to the fact that the London branch sent their summarised returns on a quarterly basis instead of a monthly basis. You are requested to analyse and decide the validity of both the objections of Mr. Naveen relating to the place of maintaining the books of account and sending summarised returns thereof to the registered office by the branch offices of the company referring to the provisions of the Companies Act, 2013. (5 marks)

Answer-5

1. Provisions of section 128 of the Companies Act, 2013, requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office.
   It also provides that all or any of the books of account may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board, the company shall within seven days thereof file with the registrar a notice in writing as per rule 2A of the Companies (Accounts) Rules, 2014 in form AOC-5 giving full address of that other place.
   Thus, in the given case, the books of accounts of BBQ Ltd. should be prepared and maintained at registered office in Hyderabad. However, the same can be maintained at the respective branches if the Board of directors have decided so and intimated the registrar a notice in writing within 7 days thereof giving full address of that other place (i.e. other than the registered office).
   Hence, objection of Mr. Naveen is valid as intimation to registrar is not specified in the question.
2. Where a company has a branch office in or outside India, it shall be deemed to have complied with the requisite provisions of section 128(1) if-

a) Proper books of account relating to the transactions effected at the branch office are kept at that office, and
b) Proper summarised returns are sent on periodical basis by branch office to the company at its registered office or other place.

As per Rule 4(1) of the Companies (Accounts) Rules, 2014, the summarized returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.
Since, London office was sending summarized returns to the registered office in Hyderabad on quarterly basis, which is as per the requirement of law, hence, the objection of Mr. Naveen is invalid.

Question-6 UINA Infra Projects Private Limited was incorporated on 1st June, 2022. Mr. X had already registered the trade name of "UINA Infra projects" on 1st April, 2018 under the Trade Marks Act, 1999. Mr. X was suffering from a pro-longed disease since 1st April, 2021. When Mr. X recovered from illness on 20th May, 2024 and joined his own office on 5th July, 2024, he came to know from his staff members that a company has been incorporated with the name UINA Infra Projects Private Limited. He lodged a complaint with the Regional Director on 10th July, 2024 requesting him to order the company to change its name. The Regional Director examined the application of Mr. X and on 11th July, 2024, issued a direction to UINA Infra Projects Private Limited to change its name. Mr. D, a director of UINA Infra Projects Private Limited contended that the above direction of the Regional Director was bad in law and therefore not proper on the following grounds:

A. That the name of the company is not too identical with or too nearly resembles to the name of any other company; and

B. That the stipulated time period of two years of making any complaint with respect to the name in the above ground was already over on 31st May, 2024.

Referring to the applicable provisions of the Companies Act, 2013, decide, whether the contention of Mr. D is tenable.
Also advise UINA Infra Projects Private Limited the time period within which the company will be required to change its name in case the direction of the Regional Director was valid.

Answer-6

According to section 16 of the Companies Act, 2013, if, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which:
in the opinion of the Central Government (Power delegated to the Regional Director), is of opinion that name (original or revised/new) of company is identical with or too nearly resembles to the name by which a company in existence, then, either:

i. On its own or
ii. On an application by a proprietor of already registered trade mark under the Trade Marks Act, 1999, it may direct the company to change its name.

The company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose.

Application by a proprietor of registered trade mark shall be made within three years of incorporation or registration or change of name of the company.

In the given question, UINA Infra Projects Private Limited was incorporated on 1st June, 2022. The trade mark of UINA Infra Projects was registered on 1st April, 2018.

In terms of the above stated provisions and facts of the question, we can answer the questions as under:

Part (i) - First Ground of Objection:

In the first instance, the contention of Mr. D (a director of UINA Infra Projects Private Limited) is not tenable due to the fact that the restriction is not only with respect to the name of an existing company, but also as a result of an application filed before the appropriate authority by the proprietor of a registered trademark.
In other words, the name of the company"UINA Infra Projects" is verbatim identical to the trademark registered by Mr. X. Hence, the contention of Mr. D is not tenable.

Part (ii) - Second Ground of Objection:

In the second instance also, the contention of Mr. D is not tenable. The application should be made by the proprietor of a registered trademark within three years of incorporation or registration or change of name of the company and not within two years.

UNIQUE ACADEMY FOR COMMERCE

Chapter 4: Share and share capital

Question-1 ABC Limited is a subsidiary company of XYZ Limited. Deepak is working as an executive director in ABC Limited. XYZ Limited passed an ordinary resolution in its general meeting to issue Sweat equity Shares to Deepak for providing his professional services. Pankaj who is Company Secretary in XYZ Ltd., objected the following:

i. Sweat equity shares cannot be issued to Deepak, who is an executive director in Subsidiary company i.e., ABC Limited.
ii. Special resolution is required to be passed in the general meeting, of XYZ Ltd. Examine the validity of objection of Company Secretary of XYZ Limited under the provisions of Companies Act, 2013. Dec 2023 2017 Syllabus (5 marks)

Answer-1 According to section 2(88) of the Companies Act, 2013, sweat equity shares means such equity shares issued by company to its directors or employees at a discount or for consideration, other than cash for providing their know how of available rights in the nature of intellectual property rights or value additions, by whatever name called.

According to explanation to Rule 8(I) of the Companies (Shares Capital and Debentures) Rules, 2014:
For the purpose of this rule the expression "Employee" means-

- A permanent employee of the company who has been working in India or outside India;
- A director of the company, whether a whole-time director or not; or
- An employee or a director as defined in sub clause (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company.

Further, section 54(1) provides that notwithstanding anything contained in Section 53, a company can issue sweat equity shares of a class of shares already issued, if the issue has been authorised by a special resolution by the company in the general meeting.

As per the above provisions of the Companies Act, 2013, the analysis of the objections of Company Secretary of XYZ Limited is as below-

i. Sweat equity shares can be issued to the executive director of ABC Limited which a subsidiary company of XYZ Limited. Hence, the objection of Pankaj is not correct.
ii. Special resolution is required to be passed to issue of sweat equity shares. Ordinary resolution is not sufficient. Hence, the objection of Pankaj is correct.

Question-2 Board of directors of Mega Ltd. an unlisted company has decided to move ahead for preferential offer of equity shares. In this connection the Managing Director wants to know:

(i) What is the time limit for completion of allotment of shares on preferential basis?
(ii) What will happen if the allotment is not completed within the time limit above?
(iii) In a situation where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted how will the price for resultant shares pursuant to conversion be determined? June 2024 2017 Syllabus (5 marks)

Answer-2 Rule 13 of Companies (Share Capital and Debenture) Rules, 2014 deals with provisions on preferential offer by unlisted companies. Accordingly,

(i) Allotment of shares on a preferential basis shall be completed within a period of twelve months of the date of passing of the special resolution.

(ii) If the allotment of shares is not completed within twelve months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.

(iii) Where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined

a. either upfront at the time when the offer of convertible securities is made, on the basis of the valuation report of the registered valuer given at the stage of such offer; or

b. at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of the valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares.

The company should take a decision on basis of above (a) or (b) at the time of the offer of convertible securities itself and make such disclosure in an explanatory statement.

Question-3 Six hundred equity shares of Aastha Ltd. are presently held jointly by Aman, Raman and Shraman–their names appearing in the share certificates in this order. The joint shareholders want a transposition of the names in the order Raman, Shraman and Aman only in respect of two hundred shares. State the procedure under Companies Act, 2013. June 2024 2017 Syllabus (3 marks)

Answer-3 In the case of joint-shareholders, one or more of them may require the company to alter or rearrange order of their names in the register of members of the company. In this process, there will be need for effecting consequential changes in the share certificates issued to them. If the company provides in its articles that the senior-most among the joint- holders will be recognised for all purposes like service of notice, a copy of balance sheet, profit and loss account, voting at a meeting etc., the request of transposition may be duly considered and approved by the Board or other authorised officer of the company. Since no transfer of any interest in the shares take place on such transposition, the question of insisting on filling transfer deed with the company, may not arise. Transposition also does not require stamp duty.
Transposition of names of shareholders in the register of members do not require the execution through instrument of transfer in Form SH-4.
The Stock Exchange Division of the Department of Economic Affairs has clarified that there is no need of execution of transfer deed for transposition of names if the request for change in the order of names was made in writing, by all the joint-holders. If transposition is required in respect of a part of the holding, execution of transfer deed will be required

Question-4 XYZ Limited, a listed company was incorporated on 1st August, 2020 with the objective of dairy business. Demand for dairy products was high in the area due to that the sales are remarkable, and business was outstanding. Hence, the Board of Directors in its meeting approved the proposal to set up a new unit in West Bengal and also resolved to raise the funds by issuing shares of the company to the public. The company intends to raise share capital by issuing equity shares in different stages over a certain period of time according to the construction works of the new unit. However, the company does not wish to issue prospectus each and every time of issue of shares. What can be the way out for the company to follow to avoid repeated

issuance of prospectus? Advise, in light of the provisions of the Companies Act, 2013.
June 2024 2022 Syllabus (3 marks)

Answer-4 Company can issue shelf prospectus under Section 31 of the Companies Act, 2013, read with Rule 10 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 to avoid repeated issuance of prospectus.

Definition: Shelf Prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. In simple terms Shelf Prospectus is a single prospectus for multiple public issue. Issuer is permitted to offer and sell securities to the public without a separate prospectus for each act of offering for a certain period.

Validity Period: Under section 31 of the Act, any class or classes of Companies, as the Securities and Exchange Board (SEBI) may provide by regulations in this behalf, may file a shelf prospectus with the Registrar. Such prospectus is to be submitted at the stage of the first offer of securities which shall indicate a period not exceeding one year as the period of validity of such prospectus. The validity period shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

Filing of Information Memorandum (FORM PAS-2) with ROC: An information memorandum is required to be filed by a company filing a shell prospectus which shall contain all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of Securities or the previous offer of securities and the succeeding offer of securities; and such other changes as may be prescribed. The Information Memorandum shall be prepared in Form PAS-2 and filed with the Registrar within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Where an information memorandum is filed, every time an offer of securities is made, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Question-5 M/s. NRS Biochemicals Limited is planning to buy-back of its shares during the financial year 2023-24 but the company has defaulted in the payment of term loan and interest thereon to its bankers and not filed the annual return for the financial year 2022-23. The company seeks your advice as to how and when the company can buy- back its shares under these circumstances as per the provisions of the Companies Act, 2013. June 2024 2022 Syllabus (3 marks)

Answer-5 Circumstances prohibiting buy-back [Section 70(1) of the Companies Act, 2013] No company shall directly or indirectly purchase its own shares or other specified securities

a. through any subsidiary company including its own subsidiary companies;
b. through any investment company of group of investment companies; or
c. if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company: However, the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

According to section 70(2) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92 (Annual Return), section 123 (Declaration of Dividend), section 127 (punishment for failure to distribute dividend) and section 129 (Financial Statement).

Therefore, NRS Bio Chemicals Limited cannot buy back its share until the expiry of cooling period (3 years) after the default is remedied since it has defaulted in repayment of loan and not filed the annual return for the financial year 2022-23

Question-6 ABC Ltd. is engaged in the manufacture of ayurvedic medicines, sales are good. Over the years, it has built a good reputation in the market made the huge profits and its Balance Sheet as at 31st March, 2023 shows the following position :

Authorized Share Capital	(50,00,000 equity shares of face value or Rs. 10/- each) Rs. 500,00,000/-)
Issued, subscribed and paid-up share capital	(10,00,000 equity shares of face value or Rs. 10/- each, fully paid-up) Rs. 100,00,000/-)
Free Reserves	Rs. 30,00,000
Securities Premium	Rs. 10,00,000
Debentures Redemption Reserve	Rs.10.00.000

The Board of Directors proposes to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the sources, conditions of bonus issue and the maximum number of bonus shares that can be issued under the provisions of the Companies Act, 2013.

(5 marks)

Answer-6 According to section 63(1) of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members. in any manner whatsoever, out of- (Sources)

- Its free reserves
- Securities premium account
- The capital redemption reserve account

No issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets

Conditions for issue of Bonus Shares
In terms of section 63(2) of the Companies Act, 2013, no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless
(a) Authorisation in AOA: It is authorised by its articles.
(b) Passing of Ordinary Resolution: It has, on the recommendation of the Board, been authorised in the general meeting of the company.
(c) No defaults: It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it; it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.
(d) Fully paid-up shares: The partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.
(e) The company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.
(f) No issue in lieu of dividend: The bonus shares shall not be issued in lieu of dividend.

Maximum number of shares to be issued:
The company proposes to issue 1 bonus share for every 2 equity shares. The issued

and fully paid- up shares are 10,00, 000. Hence, the company wants to issue 5,00,000 shares, the face value of which will be Rs. 50,00,000 and reserve of equal amount is required.

As per Section 71 of the Companies Act, 2013, where the company has created a debenture redemption reserve account, the amount credited to such account shall not be utilised by the company except for the redemption of debentures. The aggregate of eligible reserves come to Rs. 40,00,000 (Rs. 30,00,000+10,00,000).
Hence, sufficient reserves are not available and the company cannot implement its proposal to issue 1 bonus share for every 2 shares

Question-7 XYZ Ltd is a listed company with issued 10,000 equity shares of Rs. 100 each at a premium of ` 20 per share. The company has accumulated Rs. 2,00,000 in its Securities Premium Account. One of the directors suggested in the board meeting that the amount under the securities premium account may be utilized to write off the preliminary expenses of Rs. 50,000 and the balance amount for distribution of dividend to the shareholders. Assess the validity of the suggestion with reference to the provisions of the Companies Act, 2013. Dec 2024 2017 Syllabus (5 marks)

Answer-7

FACTS:

- **XYZ Ltd.** is a **listed company**.
- It has issued **10,000 equity shares of ₹100 each at a premium of ₹20 per share**.
- As a result, **₹2,00,000** is credited to the **Securities Premium Account**.
- The company has **preliminary expenses of ₹50,000** to be written off.
- A director suggested that:
  - ₹50,000 be used to write off preliminary expenses, and
  - The **remaining securities premium balance** be used to **distribute dividends** to shareholders.

PROVISIONS:

In accordance with the provisions of Section 52(2) of the Companies Act, 2013, the securities premium can be utilized only for:
a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
b) in writing off the preliminary expenses of the company;
c) writing off commission paid, or discount allowed, or the expenses incurred on issue of shares or debentures of the company.
d) for providing for the premium payable on redemption of any redeemable preference shares or debentures of the company; or
e) for the purchase of its own shares or other securities under section 68.

Section 52(3) further states that the securities premium account may, notwithstanding anything contained in sub-sections (1) and (2), be applied by such class of companies, as may be prescribed and whose financial statement complies with the accounting standards prescribed for such class of companies under section 133
a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
c) for the purchase of its own shares or other securities under section 68.

Firstly, the premium cannot be treated as profit and as such the amount of premium is not available for distribution as dividend. Secondly, the amount of premium whether

received in cash

or in kind must be kept in a separate account, known as the "Securities Premium Account". Thirdly, the amount of premium is to be maintained with the same sanctity as the share capital.

CONCLUSION:

- The suggestion to utilize ₹50,000 from the Securities Premium Account to write off preliminary expenses is valid as per Section 52(2)(b).
- However, the proposal to use the balance amount from the securities premium account for distribution of dividend is not valid under the Companies Act, 2013.
- Therefore, the director's suggestion is partly valid – valid for preliminary expenses, but invalid for dividend payment.

Question-8 Explain the consequences of forged transfer under the Companies Act, 2013. What is the normal practice the company follows to avoid the consequences of forged transfer? Dec 2024 2017 Syllabus (5 marks)

Answer-8 When the instrument of transfer (also known as transfer deed) in Form SH-4 contains the forged signature of the transferor and is presented to the company by the transferee along with the share certificates, it is called a forged transfer deed. Further Section 57 of the Companies Act, 2013 states that if any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

The consequences of forged transfer are detailed as below:
(i) A forged transfer is a nullity and the original owner of shares remains the shareholder and the member of the company. A forged transfer deed has no legal effect.
The company is bound to restore the name of the transferor on the register of members (maintained in Form MGT-1 u/s 88 of the Act) as decided in a case law Peoples Insurance Company v Wood, 1961.
(ii) A company does not incur any liability in case of a forged transfer if the name of the transferor is restored on the register of members.
(iii) However, if a company (without obtaining an indemnity bond from the transferee) issues new share certificates to the transferee who made the share transfer application using a forged transfer deed and subsequently, on receipt of new share certificates from the company, the illegal transferee sells the shares to an innocent buyer, then the company is liable to compensate the innocent buyer if it refuses to register him as a member or if the name of the innocent buyer has been removed, on the application of the true owner of the shares.
Normally, companies write to the transferor about the lodgement of the transfer deed to avoid the consequences of a forged transfer. If a company incurs any loss due to a forged transfer, it may recover the losses independently from the person who lodged the forged transfer.

Question-9 XYZ Ltd. intends to allot equity shares on a private placement basis. These

equity shares will rank pari-passu with the existing equity shares in all respects. You are requested to provide a specimen draft of the board resolution approving the private placement of shares, in compliance with the provisions of the Companies Act, 2013. Dec 2024 2022 Syllabus (5 marks)

Answer-9 Specimen of the Board Resolution Approving Private Placement of Shares

"**RESOLVED THAT** pursuant to the provisions of Section 42, 62(1)(c) and other provisions, applicable, if any, of the Companies Act, 2013 read with the Companies (Prospectus and Allotment of Securities) Rules, 2014 and the Companies (Share Capital and Debentures) Rules, 2014, the consent of the Board of Directors of the Company be and is hereby accorded for an allotment of _(_____) Equity Shares of Rs. (Rupees_____) each of the Company at par, distinctively numbered from_____ to_____ (both inclusive), to ____ from whom the Company has received share application money aggregating to Rs. _____ _____/(Rupees _____).

RESOLVED FURTHER THAT the said Equity Shares shall rank pari-passu with the existing Equity Shares in all respects.

RESOLVED FURTHER THAT any of the Directors of the Company be and is hereby authorized to file Return on Allotment of aforesaid shares in E-Form No. PAS-3 or such other applicable form from time to time with the Registrar of Companies by affixing Digital Signature thereto.

RESOLVED FURTHER THAT the Share Certificate for the shares allotted as aforesaid be issued to abovementioned allottee under the signatures of any two Directors and Mr. _____ as Authorised signatory of the Company and the Common Seal (if any) of the company be affixed on the share certificate as per the Articles of Association of the Company.

RESOLVED FURTHER THAT necessary entries in respect of issue and allotment of aforesaid shares be made in the Register of Members.

RESOLVED FURTHER THAT any of the Director of the Company be and is hereby authorized to intimate the above allotment to Depositories and/or R&T agents by submitting necessary documents and to do all such acts, deeds, matters and things which may deem necessary, pertinent, desirable, incidental in this regard."

Question-10 Greenfield Infrastructure Ltd., a company engaged in large-scale infrastructure projects, decides to raise funds by issuing 1,00,000 non-convertible secured debentures with a face value of ` 100 each, amounting to Rs. 1 crore. The debentures carry an interest rate of 9% per annum, payable annually, and are redeemable after 17 years from the date of issue. The prospectus for subscription of debentures was issued on 1st April, 2022.
To protect the interests of the debenture holders, the company appoints SafeGuard Trustees Ltd. as the debenture trustee. The debenture trustee noted that the company defaulted on the payment of interest for two consecutive years, specifically for the payments due on 31st March 2023 and 31st March 2024. Considering the facts given above and the provisions of the Companies Act, 2013 :

(i) Assess the validity of the redemption period for the debentures.
(ii) Discuss the mandatory compliance requirements for appointing a debenture trustee, including the time limit for such appointment and the execution of the trust deed.
(iii) Identify the circumstances under which it is the duty of the debenture trustee to appoint a nominee director on the Board of the Company. Dec 2024 2022 Syllabus (5 marks)

Answer-10 As per the provisions of Section 71 of the Companies Act, 2013 read with the Companies (Share Capital and Debenture) Rules, 2014 the answer is provided as below: (i) The validity of redemption period. As per Section 71(3) of Companies Act 2013, read with Rule 18(1) of the Companies (Share Capital and Debentures) Rules, 2014, the Companies engaged in

setting up of infrastructure projects may issue secured debentures for a period exceeding 10 years but not exceeding 30 years. Greenfield Infrastructure Ltd., is engaged in large-scale infrastructure projects and the redemption period is 17 years which is more than 10 years but less than 30 years. Hence, the redemption period is valid.

(ii) Mandatory compliance requirement of appointing debenture trustee, the time limit for such appointment and the execution of the trust deed. As per Section 71(5) of Companies Act 2013, read with Rule 18(2) of the Companies (Share Capital and Debentures) Rules, 2014- No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees. The names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders.
The Company shall before the appointment of debenture trustee or trustees obtain a written consent from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures. As per Rule 18(1)(c) of the Companies (Share Capital and Debentures) Rules, 2014-The company shall appoint the debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than 60 days after the allotment of the debentures, execute a debenture trust deed to protect the interest thereon.

(iii)The event under which it is the duty of the debenture trustee to appoint nominee director The duties of debenture trustee or trustees prescribed under Rule 18(3) of the Companies (Share Capital and Debenture) Rules, 2014 includes inter alia the duty relating to appointment of a nominee director on the Board of the company in the event of
(i) two consecutive defaults in payment of interest to the debenture holders; or
(ii) default in creation of security for debentures; or
(iii) default in redemption of debentures.

Question-11 Guddi Logistics Limited offered 1,00,000 equity shares of Rs. 10 each to a select group of 250 persons, including 60 qualified institutional buyers. The share application money was received by the company on 1st August 2024. However, the company failed to allot the shares by 30th September 2024. During this period, the company utilized this money to pay interest on a cash credit limit sanctioned by its banker. The company secretary raised an objection to the utilization of the share application money for interest payment and suggested the CFO to refund it to the share applicants with interest at 12% per annum, effective from 1st October 2024. The CFO holds the view that the interest will be payable from 15th October, 2024.
Considering the provisions of the Companies Act, 2013, examine the validity of the offer made to the select group of 250 persons, as well as the objection and suggestion made by the company secretary to the CFO. Dec 2024 2022 Syllabus (5 marks)

Answer-11

FACTS:

- Guddi Logistics Ltd. offered 1,00,000 equity shares of ₹10 each to a select group of 250 persons, including 60 Qualified Institutional Buyers (QIBs),

through private placement.

- The application money was received on 1st August 2024, but shares were not allotted by 30th September 2024.
- The application money was used by the company to pay interest on a cash credit limit sanctioned by its bank.
- The Company Secretary objected, stating that:

- The application money cannot be used for such purpose, and
- It should be refunded with interest @12% p.a. from 1st October 2024.

- The CFO claims that interest is payable only from 15th October 2024.

PROVISIONS:

- Validity of offer to select group of 250 persons.
  As per section 42(2) of the Companies Act 2013 read with rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, a private placement shall be made only to a select group of persons who have been identified by the Board, whose numbers shall not exceed 200 in aggregate in a financial year, excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employee's stock option in terms of provisions of clause(b) of sub-section (1) of section 62 of the Companies Act, 2013 in a financial year subject to such conditions as may be prescribed. It is further clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture. In this present case, Guddi Logistics Limited made a private placement offer to 250 persons, including 60 qualified institutional buyers. Excluding these 60 QIBs, the offer was made to 190 select persons, which is within the prescribed limit of 200 persons. Therefore, the offer made to a total of 250 select persons is valid under provisions of the Companies Act, 2013.
- Objection and Suggestion by the Company Secretary Regarding Utilization of Application Money and Refund with Interest: As per Section 42(6) of the Companies Act, 2013, a company must allot the securities within 60 days from the receipt of the application money. If the company fails to allot the securities within this period, it is required to refund the application money within 15 days from the expiry of the 60 day period.
- If the refund is not made within these 15 days, the company is liable to pay interest at 12% per annum from the expiry of the 60 days.
- Additionally, the application money cannot be used for any purpose other than the allotment of securities or for the repayment of monies where the company is unable to allot securities. In the present case, the company failed to allot the shares by 30th September 2024, which is the 60th day from the receipt of the application money on 1st August 2024. The application money should therefore be refunded by 15th October 2024. If not refunded by this date, interest at 12% per annum will be payable from 1st October 2024.

CONCLUSION:

1. Validity of Offer:
   - The offer made to 250 persons including 60 QIBs is valid as per Section 42, since the number of non-QIB offerees is 190, which is within the prescribed limit of 200.
2. Utilization of Application Money:
   - The application money was wrongfully utilized for paying interest on a bank cash credit facility.
   - As per Section 42(6), this is not a permitted use of application money.
   - Therefore, the objection of the Company Secretary is valid.
3. Refund and Interest:
   - If allotment was not made by 30th September 2024, the company must refund the money by 15th October 2024.
   - If not refunded, interest at 12% p.a. is payable from 1st October 2024, not from 15th October.

- Hence, the Company Secretary’s suggestion is correct, and the CFO's view is incorrect.

Question-12 RSV Private Limited., incorporated five years ago, passed a special resolution during its Annual General Meeting (AGM) held on 30th September, 2024, to issue 10 lakh sweat equity shares at a discount to a class of directors and permanent employees. The company's latest financial statement shows an issued, subscribed, and paid-up equity share capital of Rs. 5 crore, divided into 50 lakh equity shares of Rs. 10 each. Considering the provisions of the Companies Act, 2013:

(i) Assess the validity of issuing 10 lakh sweat equity shares with a lock-in period of 5 years.

(ii) Would your answer change, if RSV Pvt. Ltd. were classified as a Start-up company as defined by the Ministry of Commerce and Industry, Government of India ? Dec 2024 2022 Syllabus (5 marks)

Answer-12 (i) Section 54(1) of Companies Act 2013 provides that notwithstanding anything contained in Section 53, of Companies Act 2013 a company can issue sweat equity shares, of a class of shares already issued, if the following conditions, are satisfied:

1. Authorisation by Special Resolution: The issue has been authorized by a special resolution passed by the company in the general meeting. The resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued.
2. Limitations on issue of sweat equity shares: Rule 8(4) of the Companies (Share Capital and Debenture) Rules 2014 states that, the company shall not issue sweat equity shares for more than fifteen percent of the existing paid-up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher. The issuance of sweat equity shares in the company shall not exceed twenty five percent, of the paid up equity capital of the company at any time.
3. Three Years Locking Period: Rule 8(5) of the Companies (Share Capital and Debenture) Rules 2014-The sweat equity shares issued to directors or employees shall be locked for a period of three years from the date of allotment and the fact that the share certificates are under lock-in and the period of expiry of lock in shall be stamped in bold or mentioned in any other prominent manner on the share certificate.

The sweat equity shares may be issued at a discount. It has been correctly authorised by passing a special resolution. The size of issue of shares should not exceed 7,50,000 shares (15%*50 lakh shares). However, the company has issued 10,00,000 sweat equity shares which is in excess of the prescribed limit of 15% in any year though it is within the limit of 25% of total shares at any time. The lock-in period should be 3 years but the company has fixed it for 5 years. Considering this the company has violated the conditions regarding size and lock-in period of the issue of sweat equity shares. However, the value of proposed 10 lakh sweat equity shares @ Rs. 10 per share i.e. Rs. 1 crore does not exceed Rs. 5,00,00,000, the company can issue 10 lakh sweat equity shares, not exceeding the overall limit of 25% of paid-up equity share capital at any time.

(ii) If the company is a Start-up company:

As per proviso to Rule 8(4) of the Companies (Share Capital and Debenture) Rules 2014 -A startup company, as defined by Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding fifty percent of its paid up capital up-to ten years from the date of its incorporation or registration.

The company was incorporated 5 years ago and not crossed the time limit of 10 years from its incorporation. The issue size of 10 lakh equity shares would be within the limit

of 50% of the total paid-up shares (50%*50 lakh=25 lakh) but the lock-in-period of 5 years will be a violation of condition of section 54. Hence, for this reason, the issue of sweat equity shares shall be invalid.

Question-13 Regarding the Employees Stock Option Scheme (ESOP), explain the following:

(i) Whether all employees, directors, and independent directors are eligible for allotment of shares under this scheme?

(ii) Whether a lock-in period of five years can be provided under the ESOP?

Dec 2024 2022 Syllabus (3 marks)

Answer-13 (i) As per the provisions under section 62(1)(b) of the Companies Act, 2013 and Rule 12 of the Companies (Share Capital and Debenture) Rules, 2014 the following employees including directors shall be eligible for ESOP:

(a) a permanent employee of the company who has been working in India or outside India; or

(b) a director of the company, whether a whole time Director or not but excluding an Independent Director; or

(c) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company but does not include

(i) an employee who is a promoter or a person belonging to the promoter group: or

(ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

The conditions mentioned in sub-clause (i) and (ii) shall not apply to a startup company up to ten years from the date of its incorporation or registration.

Accordingly, all permanent employees subject to exceptions and all directors shall be eligible but the independent directors shall not be eligible for ESOP.

(ii) Company has freedom to specify lock-in period

Rule 12(6)(b) of the Companies (Share Capital and Debenture) Rules, 2014 states that the company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option, Hence, a lock-in period for five years can be provided under ESOP.

Question-14 Referring to the provisions of the Companies Act, 2013, answer the following queries:

a. What is the type of resolution to be passed and maximum number of persons to whom an offer by private placement in a financial year be made?

b. Explain the consequences of non-allotment of shares within the stipulated timeline.

c. In case the shares were allotted within the requisite allowed time, when can the company start utilizing the funds received by it from such private placement? (5 Marks)

Answer-14

a) Rule 14 (1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, requires prior approval of the shareholders of the company, by a special resolution for each of the private placement offers or invitations.

Provided further that this sub-rule shall not apply in case of offer or invitation for non- convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of sub-section (1) of section 180 in such cases relevant Board resolution under clause (c) of sub-section (3) of section 179 would be adequate.

Provided also that in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds

the limit as specified in clause (c) of sub-section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.
Thus, based on above, the resolution will be passed.

As per section 42(2) of the Companies Act, 2013, a private placement shall be made only to a select group of persons who have been identified by the Board, whose number shall not exceed 50 or such higher number as may be prescribed, in a financial year.
Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 has prescribed 'an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred (200) in the aggregate in a financial year'.
Provided that any offer or invitation made to Qualified Institutional Buyers and Employees of the company being offered under a scheme of ESOP under section 62(1)(b) shall not be considered while calculating the limit of two hundred persons.
As per rule 14(7), NBFCs which are registered with the RBI and Housing Finance Companies which are registered with the National Housing Bank; if they are complying with any regulations made by the RBI or National Housing Bank in respect of offer or invitation to be issued on private placement basis, then need not to comply with the rule 14(2) above.
Thus, based on above, the maximum number of persons to whom an offer by private placement in a financial year will be determined.

b) As per section 42(6) of the Companies Act, 2013 provides that a company making an offer or invitation under private placement shall allot its securities within sixty days from the date of receipt of the application money.
If company fails to make allotment within 60 days, then repayment of the application money to the subscribers shall be made within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day.

c) Company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with section 42(8). The return of allotment shall be filed with the Registrar within 15 days from the date of the allotment under section 42.
Hence, it can utilize the money thus received once the return has been filled with the Registrar.

Question-15
Stuti Ceramic Pvt. Ltd. (SCPL) manufactures crockery items which are predominantly used only by the domestic household customers. Now the company wants to expand its area of operation to manufacture all types of crockery items and cutlery for the use of big hotels. For this expansion plan, the company needs funds of around ` 500 lakh. The company does not want to convert itself from private company to public company since the promoters do not want to dilute their equity stake otherwise the public company have the option to raise the funds through public issue. The company explored the other avenue of raising funds by issue of right shares to the existing shareholders, however only ` 100 lakh could be generated.
The banks and financial institutions are also reluctant to increase their exposure in the company. Referring to the provisions of the Companies Act, 2013, advise the SCPL, whether the company can raise further funds through private placement issue. If so, are there any limit for fresh offer and time limit of allotment of securities? (5 Marks)

Answer-15

(a) Whether Stuti Ceramic Pvt Ltd (SCPL) can raise funds through Private Placement? Yes, SCPL can raise funds through the private placement of shares.

Section 23(2)(b) of the Companies Act, 2013 (the Act) provides that a private company may issue securities through private placement by complying with the provisions specified in section 42 of

the Act in supplement with those stated under Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Meaning of Private Placement

According to the Explanation I to section 42(3) of the Act, “private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

Offer to be made only to a select group of persons

A private placement shall be made only to a select group of not more than two hundred (200) persons (referred to as “identified persons”) in a financial year who have been identified by the Board after passing a special resolution [Section 42(2) read with Rule 14(1) of the Companies (Prospectus and Allotment of Securities), Rules 2014].

Limit on Fresh Offer

As per section 42(5) of the Act, no fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

Thus, Stuti Ceramic Pvt. Ltd. can raise further funds through private placement issue after the allotments with respect to right issue for ` 100 lakh have been completed and subject to the maximum number of 200 persons (identified persons) under section 42(2) and by complying with the procedures stated in Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Time Limit for Allotment of Securities

As per section 42(6) of the Companies Act, 2013, a company making an offer or invitation under this section shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the expiry of 60 days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12% per annum from the expiry of the sixtieth day.

UNIQUE ACADEMY FOR COMMERCE

Chapter 5: Members and Shareholders

Question-1 Can the following persons or institutions become member of a company under the provisions of Companies Act, 2013:
(i) MK Associates, which is a Partnership Firm.
(ii) Devid, who is a Foreigner and resident of Japan.
(iii) HUF Dec 2023 2017 Syllabus (3 marks)

Answer-1 Answer of the given question is as below

a. A partnership firm is not a legal person and as such it cannot, in its own, become a member of a company. MK Associates, which is a partnership firm, cannot be a member of Company.

b. A foreigner may take the shares in an Indian Company and become a member subject to the provisions of the Foreign Exchange Management Act, 1999, but in the event of war with his country, he become an alien enemy and his power of voting and his rights to receive notices are suspended. Thus, Devid can be a member of Company.

c. HUF is not a juristic person, although it is a person for purpose of the Income Tax Act, 1961. HUF is represented by its Karta. There is no legal bar on HUF to invest its money in shares and securities and the Companies Act does not prohibit membership of HUF. In case of an HUF, the shares can be registered in the name of Karta of HUF.

Question-2 Analyse the eligibility of a minor to become member of the company and other issues incidental thereto in the following scenarios:
(i) Minor becoming member by agreement signed by him
(ii) Minor becoming member by allotment or transfer of fully paid-up shares through guardian
(iii) Minor becoming member by transfer of partly paid-up shares and liability of future calls thereon
(iv) Restoration of dividend to the company, if he repudiates the agreement of membership on attaining majority. Dec 2023 2022 Syllabus (5 marks)

Answer-2 i. A member who is a minor is wholly incompetent to enter into a contract/agreement and as such cannot become a member of a company. Consequently, an agreement by a minor to take shares is void ab-initio.
ii. An agreement in writing for a minor to become a member may be signed on behalf of the minor by his lawful guardian and the registration of transfer of shares in the name of the minor, acting through his or her guardian, especially where the shares are fully paid cannot be refused on the ground of the transferee being a minor [Miss Nandita Jain v. Benett Coleman and Co. Ltd., Appeal No. 27 of 1972 dated 17.2.78]. iii. If shares are transferred to a minor, the transferor will remain liable for all future calls on such shares so long as they are held by the minor even if the transferor was ignorant of his minority.
iv. In this case, a minor is not required to restore the dividend received by him during his minority and the company cannot invoke the doctrine of estoppel against him. [Sadiq Ali v. Jai Kishori, (1928) 30 Bom. L.R. 1346].

Question-3 ‘‘In a company limited by shares all members will ordinarily be the shareholders but all shareholders need not be the members, ipso facto.’’ Differentiate between ‘members’ and ‘shareholders’ considering the provisions of the Companies Act, 2013. Dec 2023 2022 Syllabus (5 marks)

Answer-3

Difference between the Member and the Shareholder

Sr.No.	Member	Shareholder
1	Section 2(55) of the Companies Act, 2013 specifies the meaning of 'member'.	On the other hand, the meaning of 'shareholder' is not defined under the Companies Act, 2013
2	A shareholder becomes a member of a company, once his name is entered into the company's register of members or if he is a subscriber to the incorporation of the company. Every other person who agrees in writing to become a member of the company and whose name is entered in its register of members shall, be a member of the company.	The person who has ownership of shares of a company is known as shareholder. Further, companies limited by guarantee do not have a share capital, and consequently, their members are not shareholders.
3	The subscribers to the Memorandum of a company who shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as members in its register of members. The person who signs the memorandum of association with the company becomes a member.	After signing the memorandum, a person may become shareholder only when the shares are allotted to him.
4	The bearer of a share warrant is not a Member.	Whereas, the holder of a share warrant is a Shareholder.
5	A member who has transferred his shares, though he does not hold any shares yet he continues to be member of the company until the transfer is registered and his name is removed from the register of members maintained by the company.	Similarly, A person may be a holder of share by transfer but will not become its member until the transfer is registered in the books of the company in his favour and his name is entered in the register of members.

Question-4

(ii) Examine whether Joy will fall under the purview of Significant Beneficial Owner with respect to Zed Ltd. in the following circumstances :

(a) Joy holds 7% of equity in Zed Ltd. directly. He is also the trustee of a discretionary trust that holds 4% equity in Zed Ltd.

(b) Joy holds 6% of equity while Mahek holds 7% of equity in Zed Ltd. and they are deemed to act together.

(c) Joy holds 9% of equity in Zed Ltd. directly. He is also the Karta of a HUF that holds 7% equity in Zed Ltd.

(3 marks)

Answer-4 As per Rule 2(h) of the Companies (Significant Beneficial Owners) Rules 2018, Significant Beneficial Owner in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:

(iv) holds indirectly, or together with any direct holdings, not less than 10% of the shares;

(v) holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;

(vi) has right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a financial year

through indirect holding

alone, or together with any direct holdings

(vii) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

a) Joy holds 7% of equity in Zed Ltd. directly. He is also the trustee of a discretionary trust that holds 4% equity in Zed Ltd. He is a Significant Beneficial Owner since he holds total 11% equity in Zed Ltd. through indirect and direct holdings. Holding by way of being a trustee of a discretionary trust is considered to be indirect holding.

b) Joy holds 6% of equity while Mahek holds 7% of equity in Zed Ltd. and they are deemed to act together —– Joy and Mahek are not Significant Beneficial Owner as there is no indirect holding and their acting together is irrelevant.

c) Joy holds 9% of equity in Zed Ltd. directly. He is also the Karta of a HUF that holds 7% of equity in Zed Ltd. - He is a Significant Beneficial Owner since he holds total 16% equity through indirect and direct holdings.

Question-5 Global Services Limited is planning to issue its equity shares through private placement to some of the persons residing outside India. There is a provision in the Articles of Association of the company for issuing equity shares to the foreigners through private placement. Board in its meeting approved the resolution allotting 10,000 shares to A and B who reside outside India. You are requested to elucidate the compliance requirement of the following referring to the provisions of the Companies Act, 2013:

(i) Maintenance of foreign register of members?

(ii) Option available, if any, to discontinue the maintenance of foreign register of members. June 2024 2022 Syllabus (3 marks)

Answer-5 (i) Section 88(4) of the Companies Act, 2013 empowers companies to keep foreign registers of members or debenture- holders, other security holders or beneficial owners residing outside India. It states:

“A company may, if so, authorized by its articles, keep

in any country outside India, in such manner as may be prescribed, a part of the register referred to in section 88(1), called “foreign register” containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.”

A foreign register is deemed to be a part of the company’s principal register and it should be kept in the same manner as the principal register and be likewise open to inspection. A duplicate of such register should be maintained at the registered office in India and all entries made in the foreign register should be made in the duplicate register at the registered office as soon as possible.

(ii) According to Rule 7(11) of the Companies (Management and Administration) Rules, 2014, the company may discontinue the keeping of any foreign register; and thereupon all entries in that register shall be transferred to some other foreign register kept by the company outside India or to the principal register. Thus, in the given case the Company has the option to discontinue maintenance of foreign register of members.

Question-6 XYZ Pvt. Ltd. is having complex shareholding structure. Its shares are held by a multitude of entities, including individuals, trusts, partnerships, and other companies. Ambar holds 8% of equity shares of XYZ Pvt. Ltd. directly. He also holds

60% of equity shares of PQR Ltd. which holds 2% of equity shares of XYZ Pvt. Ltd. Based on this information and referring to the provisions of the Companies Act, 2013, explain the meaning of significant beneficial owner and determine, whether Ambar is a significant beneficial owner of XYZ Pvt. Ltd. Dec 2024 2017 Syllabus (3 marks)

Answer-6

FACTS:

- XYZ Pvt. Ltd. has a complex shareholding structure, with shareholders including individuals, trusts, partnerships, and companies.
- Ambar holds:
  - 8% equity shares in XYZ Pvt. Ltd. directly, and
  - 60% equity shares in PQR Ltd., which in turn holds 2% equity shares in XYZ Pvt. Ltd.
- The question is whether Ambar qualifies as a Significant Beneficial Owner (SBO) of XYZ Pvt. Ltd.

PROVISIONS:

As per Section 90 read with Rule 2(1)(h) the Companies (Significant Beneficial Owners) Rules, 2018 "significant beneficial owner" in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:

(i) holds indirectly, or together with any direct holdings, not less than ten percent of the shares;

(ii) holds indirectly, or together with any direct holdings, not less than ten percent of the voting rights in the shares;

(iii) has right to receive or participate in not less than ten percent of the total distributable dividend, or any other distribution, in a financial year through indirect holding alone, or together with any direct holdings;

(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

ANALYSIS:

Ambar is holding 8% of equity shares of XYZ Pvt. Ltd. directly and holds majority stake in PQR ltd, hence he holds rights indirectly also in XYZ Ltd i.e. 2% equity shares indirectly. As he holds not less than 10% of the equity shares of XYZ Pvt. Ltd. he is a significant beneficial owner of that company.

CONCLUSION:

- Based on the combined direct and indirect holdings, Ambar holds 10% of the equity shares of XYZ Pvt. Ltd.
- Therefore, Ambar qualifies as a Significant Beneficial Owner under Section 90 of the Companies Act, 2013 read with the relevant Rules.
- As such, Ambar is required to make a declaration in Form BEN-1, and XYZ Pvt. Ltd. must maintain a register in Form BEN-3 and file Form BEN-2 with the Registrar of Companies.

Question-7 Explain the meaning of a "member" under the provisions of the Companies Act, 2013. Can a subsidiary company become a member and shareholder of its holding company? Can a foreigner be a member of a company? You are requested to clarify these points with reference to the provisions of the Companies Act, 2013. Dec 2024 2022 Syllabus (5 marks)

Answer-7 According to Section 2(55) of the Companies Act, 2013, member, in relation to a company, means,

a. The subscribers to the memorandum of a company who shall be deemed to have

agreed to become members of the company, and on its registration, shall be entered as members in its register of members; b. Every other person who agrees in writing to become a member of a

company and whose name is entered in its register of members shall, be a member of the company;
c. Every person holding shares of a company and whose name is entered as a beneficial owner in the records of a depository shall be deemed to be a member of the concerned company.
A company is composed of members, though it has its own separate legal entity. The members of a company are the persons who, for the time being, constitute the company, as a corporate entity.

A subsidiary company as member / shareholder of its holding company
As per section 19 of the Companies Act, 2013, a subsidiary company cannot become a member of its holding company.

Exceptions:
However, a subsidiary can hold shares in its holding company only under the following exceptional circumstances −

- where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- where the subsidiary company holds such shares as a trustee; or
- where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Foreigners as members
A foreigner may take shares in an Indian company and become a member subject to the provisions of the Foreign Exchange Management Act, 1999, but in the event of war with his country, he becomes an alien enemy and his power of voting and his rights to receive notices are suspended.

Question-8 *MNO limited has the following equity share capital −*

Class-1: Equity Share Capital – 3,00,000 equity shares of ₹ 10 each. *(1 voting right for every 1 share)*	*₹ 30,00,000*
Class-2: Equity share Capital – 50,000 equity shares of ₹ 10 each. *(1 voting right for every 5 shares)*	*₹ 5,00,000*

At the time of issue, the company had fulfilled all the conditions related to the issue of equity share capital.

The company wants to vary the voting rights of class 2 equity share capital– 1 voting right for every 5 shares to 1 voting right for every 10 shares.

The Company's Memorandum and Articles of Association have given the company the power to make the variation. The holders of 40,000 equity shares have their consent in writing for this variation.

Out of dissenting shareholders, the holders of 4,500 equity shares want to apply to the Tribunal against the company's action.

Examine, with reference to the relevant provisions of the Companies Act, 2013-

(i) Whether a company can change the rights of its shareholders?

(ii) Whether the dissenting shareholders can apply to the Tribunal?

(5 Marks)

Answer-8 Section 48 of the Companies Act, 2013, allows the variation of shareholders' rights, if three conditions have been met.
First - There should be a provision in the memorandum or articles of the company entitling it to vary such class rights, in absence of same; the terms of issue of the shares of that class not prohibiting such a variation.
Second - The holders of at-least 75% of the issued shares of that class must have given their consent in writing or pass a special resolution sanctioning the variation at a separate class meeting.
Proviso to sub-section 1, provides if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.
Third − Where the holders of not less than10 per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled and where any such application is made the variation shall not have effect unless and until it is confirmed by the Tribunal.

i. In the given question, 40,000 equity shareholders of Class 2 have given their consent in writing for the variation.
Since, 80% (40,000/ 50,000) of the shareholders have given the consent, the company can change the rights of Class 2 shareholders provided such change in the rights of Class 2 shareholders is not affecting the rights of any other class of shareholders i.e. Class 1 shareholders in this case.

ii. Total number of dissenting shareholders= 50,000- 40,000= 10,000.
Minimum number of shareholders who may apply to the Tribunal and then variation shall not take effect unless and until it is confirmed by the Tribunal= 10% of 50,000=5,000.
In the given question, since less than 5,000 (here 4,500) shareholders are intending to apply to Tribunal, hence, they cannot apply.

Question-9 SAB Health Products Limited issued equity shares worth ` 5,00,00,000 (5,00,000 equity shares of ` 100 each) and it was fully subscribed and partly paid at ` 50 each. The company made a call to all its subscribers to pay a sum of ` 30 for each share held by them. Mr. GH, a subscriber to the shares of a company, holding 10,000 shares, paid all the money due on the shares held by him in advance. Later, Mr. GH claimed interest on the money advanced by him and also dividend in respect of the advance money paid. Is his claim justified? Another shareholder Mr. LK holding 15,000 shares did not pay the first call. So, the directors called upon him to pay the entire amount due by him in respect of the shares held by him. Referring to the provisions of the Companies Act, 2013 and Rules made there under, examine whether the directors of SAB Health Products Limited permitted to do so? (5 Marks)

Answer-9 As per section 50 of the Companies Act, 2013, (the Act) a company may, if so authorized by its Articles, accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up.
As per section 51 of the Act, a company may, if so authorized by its Articles, pay dividends in proportion to the amount paid-up on each share. The Board of Directors of a company may decide to pay dividends on pro-rata basis if all the equity shares of the company are not equally paid-up. Interest can be paid on such advance, if permitted by Articles. Here it is worth noting that, where the rate of interest is

permitted by the Articles on such advance payment, same could be varied by shareholders in general meeting.
Further, section 49 of the Act, specifies that calls shall be made on a uniform basis on all shares that are falling under the same class. A shareholder on whom a regular call for payment has been served may choose to pay only a part of the sum due.

Hence, in the light of the stated provisions, SAB Health Products Limited is permitted to do the following acts:
Is Mr. GH's claim justified?
Mr. GH is entitled to claim interest on money advanced by him and also dividend in proportion to the amount paid-up on each share, if so authorized by the Articles of the company.
In the matter of Mr. LK
Whereas, with respect to Mr. LK, calls shall be made on a uniform basis by the directors, on all shares that are falling under the same class as per section 49 of the Act. A call cannot be made on some of the members only, unless they constitute a separate class of shareholders.
Therefore, the action of the Board of Directors of SAB Health Products Limited towards Mr. LK for calling to pay the entire amount due by him in respect of the shares held by Mr. LK is invalid and not permissible.

Question-10 The paid up share capital of Star Furnishing Limited is ` 1,00,00,000 divided into 10,00,000 equity shares of ` 10 each as at 31stMarch, 2024. Out of this, Home Decor Limited is holding 6,00,000 equity shares and the remaining equity shares of 4,00,000 held by others. Simultaneously, Star Furnishing Limited is holding 7% equity shares of Home Decor Limited out of which 2% equity shares are held as a legal representative of a deceased member of Home Decor Limited. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:
(i) Can Star Furnishing Limited make further investment in equity shares of Home Decor Limited during 2024-25?
(ii) Can Star Furnishing Limited exercise voting rights at the Annual General Meeting of Home Decor Limited? (5 Marks)

Answer-10
(i) Can Star Furnishing Limited, make further investments in equity shares of Home décor Limited during 2024-25?
According to section 19 of the Companies Act, 2013, a subsidiary company is not allowed to hold shares of its holding company. The prohibition also extends up to the nominees of the subsidiary company. Also, a holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.
The prohibition does not apply to the following cases:
a. Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
b. Where the subsidiary company holds such shares as a trustee; or
c. Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company, but in this case, it will not have a right to vote in the meeting of holding company.

It is also provided that the subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.
In the given question Star Furnishing Limited is a subsidiary of Home Décor Limited as it holds 60% (6,00,000/10,00,000 shares) shares of Star Furnishing Limited. Simultaneously, Star Furnishings Limited is holding 7% equity shares in Home Décor Limited out of which 2% are held as a legal representative of a deceased member of Home Décor Limited.

These shares are held by Star Furnishings Limited before Home Décor Limited became its holding company. However, after becoming its subsidiary, Star Furnishings Limited cannot make further investment in Home Décor Limited.

(ii) As per second proviso to section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.
Accordingly, Star Furnishings Limited can exercise voting rights at the Annual General Meeting of Home Décor Limited only in respect of 2% shares held in the capacity of legal representative and not for other 5% shares.

UNIQUE ACADEMY FOR COMMERCE

Chapter 6: Debt Instruments

Question-1 The Board of Directors (BOD) of ABC Ltd., is planning to invite deposits from public for the purpose of meeting its short-term requirements of 20 crore in its scheduled meeting to be held on 1st October, 2023. Deposits will be repayable within 4 months from the date of such deposit. The paid-up share capital and free reserves of ABC Ltd., is 225 crore and 375 crore respectively as per audited accounts as on 31st March, 2023. The Company Secretary of ABC Ltd. opposed the above proposal of BOD with the contention that the Company cannot accept deposits, which is repayable earlier than 6 (six) months from the date of such deposits. Advise BOD of ABC Ltd. as per the provisions of the Companies Act, 2023. Dec 2023 2017 Syllabus (3 marks)

Answer-1

FACTS:

- The Board of Directors (BOD) of ABC Ltd., a company with:
  - Paid-up share capital: ₹225 crore
  - Free reserves: ₹375 crore
  - Aggregate = ₹600 crore
- The company plans to accept deposits from the public amounting to ₹20 crore, repayable within 4 months from the date of such deposit.
- The purpose is to meet short-term fund requirements.
- The Company Secretary objects, stating that deposits cannot be accepted if they are repayable earlier than 6 months.

PROVISIONS:

As per section 73 of the Companies Act, 2013 read with proviso to rule 3 of the Companies (Acceptances of Deposits) Rules, 2014, a company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for the repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that

a. Such deposits shall not exceed ten percent of aggregate of the paid-up share capital, free reserves and securities premium account of the company, and
b. Such deposits are repayable not earlier than three months from date of such deposit or renewal thereof.

BOD of ABC Ltd., is planning to invite deposits of Rs. 20 crore which is not more than Rs. 60 crore (10% of i.e., Rs. 600 crore) and repayment period is not earlier than three months from the date of such deposits.

CONCLUSION:

- ABC Ltd. proposes to accept ₹20 crore, which is within the 10% limit of ₹600 crore, i.e.,
  ₹60 crore.
- The proposed repayment period of 4 months is more than the minimum 3 months required.
- Therefore, the proposal complies with the Companies Act, 2013 and the relevant rules.
- The objection of the Company Secretary is not valid.
- The Board of Directors may proceed to accept deposits of ₹20 crore for short-term needs, provided all other procedural requirements are met.

Question-2

(c) *XYZ Ltd. is an eligible company and has accepted during the financial year ended 31st March, 2023 the following receipts :*

S.No.	Receipts
1.	Amount received against issue of commercial paper
2.	Amount received from a person who, at the time of the receipt of the amount, was a director of the company and has furnished a written declaration that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.
3.	Amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest-bearing security deposit.
4.	Term deposits received from members for 2 years
5.	Deposits from public for 36 months.

Referring to the provisions of the Companies Act, 2013 you are requested to state, which of the above receipts will be considered as deposits and which of them will be reported in return DPT-3 by the company ?

(5 marks)

Answer-2 Section 2(31) of the Companies Act, 2013 read with Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014, 'deposit' includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include the receipts specified under the Rules.
The receipts under Serial No. 1, 2 and 3 will fall in the exempted category and shall not be considered as deposits.
The other 2 receipts at Serial No. 4 and 5 will constitute the deposits.
Rule 16 of the Companies (Acceptance of Deposits) Rules, 2014, states that every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in the Companies (Registration Offices and Fees). Explanation - It is hereby clarified that Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company.
Considering the explanation read with Form DPT-3, XYZ Ltd. is required to report all transactions at Serial No. 1 to 5 in Form DPT-3 whether considered as deposit or not.

Question-3 Referring to the provisions of Companies Act, 20l3 (ACT), comment on the following:

(i) Any public company can accept deposit from the public by passing a Board Resolution.
(ii) Just like the provisions of the Act on debentures, appointment of Deposit Trustee is not mandatory for all companies when the number of depositors does not exceed five hundred.
(iii) The amount lying in Deposit Repayment Reserve can be used to issue bonus share. June 2024 2017 Syllabus (5 marks)

Answer-3 (i) The statement given is not true. Only eligible public companies as referred in sub section (1) of Section 76 of the Companies Act, 2013 read with The Companies (Acceptance of Deposits) Rules, 2014 having net worth of Rs. 100 crore or more or having an annual turnover of Rs. 500 crore or more and which has obtained prior consent of its members by a special resolution and filed the special resolution with

the Registrar of Companies (ROC) at least 30 days before issue of circular to the depositor in Form DPT-1 can accept deposits from the public.

Thus, only passing a Board resolution for accepting deposits is not sufficient. Approval of members in general meeting by special resolution is mandatory for accepting deposits by the company.

(ii) The statement is not true. Appointment of independent deposit trustees is to safeguard the interests of the depositors. Appointment of deposit trustee is mandatory for companies accepting deposits from its members under section 73(2) of the Companies Act, 2013 (the Act) and also for eligible companies accepting deposits from the public under section 76(1) of the Act. According to Rule 7(1) of Companies (Acceptance of Deposit) Rules, 2014, no company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits. Whereas According to Section 71(5) of the Act read with Rule 18(2) of Companies (Share Capital and debentures) Rules, 2014, appointment of debenture trustee for a company is mandatory for a company issuing debentures when the number of debenture holders exceeds five hundred. Hence, the appointment of deposit trustee is mandatory for companies accepting deposits irrespective of the number of deposit holders.

(iii) As per Section 73 (5), the amount deposited in the deposit repayment reserve account shall not be utilized for any purpose other than for the purpose of repayment of deposits. Thus, the amount lying in Deposit Repayment Reserve cannot be used to issue bonus share.

Question-4 Jubilant Technologies Private Ltd. has commenced maintaining its books of account in electronic mode as per its Board's resolution dated 1st October, 2023. There is a query from the Accounts department to you, Company Secretary in employment regarding requirement of intimation of any specific information to the Registrar annually at the time of filing of financial statements on this aspect. Advise with reference to the provisions of Companies Act, 20I3. June 2024 2017 Syllabus (3 marks)

Answer-4 Pursuant to Rule 3(6) of the Companies (Accounts) Rules, 2014 the company shall, where books of account are maintained in electronic mode, intimate to the Registrar on an annual basis at the time of filing of financial statement —
a) the name of the service provider;
b) the internet protocol address of service provider;
c) the location of the service provider (wherever applicable);
d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.
e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.

Question-5 (a) Referring to the provisions of the Companies Act read with the relevant Rules examine, whether the following amounts received by a company will be considered as deposits or not :

(i) Tiwari Exports Limited has raised ` 12,00,000 through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognized stock exchange as per the applicable regulations made by the Securities and Exchange Board of India.
(ii) National Refrigeration Ltd., a leading fridge manufacturer in North India,

received ` 2 crore from Mr. Ankit for supply of 2000 fridge and made appropriation of such advance after expiry of 390 days from the date of acceptance of such advance.

(iii) Lalit ceased to be a director of ABC Pvt. Limited (the company) by resignation w.e.f. June 15, 2023 and the company received Rs. 50,00,000/- (Rupees Fifty lakh) from Priya (spouse

of Lalit) on June, 10, 2023 and the amount was self-earned savings of Mr. Priya as per her declaration. June 2024 2022 Syllabus (2+2+1=5 marks)

Answer-5 Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 provides the provisions relating to various amounts received by a company which will not be considered as deposits. In terms of this Rule, the answers to the given situations shall be as under:

(i) Rs. 12,00,000 raised by Tiwari Exports Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub- clause (ixa) of Rule 2 (1) (c).

(ii) Rs. 2,00,00,000 (Rupees Two crore) received by National Refrigeration Limited from Mr. Ankit, as an advance for the supply of goods, but appropriated the said advance after the expiry of 390 days (i.e., more than 365 days). Hence, this amount will be considered as deposit in terms of Rule 2 (1) (c)(xii)(a).

(iii) Rs. 50,00,000 by ABC Pvt Limited from Ms. Priya (i.e. relative of Director), will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c), because she has given a declaration that the amount is given out of her self-acquired funds and not from borrowing etc.

Question-6 Comment on the following with reference to the provisions of the Companies Act, 2013:

(i) Any listed company can accept deposits from the public up to its net worth.

(ii) An eligible company can accept only secured deposits from the public.

(iii) A private company which is a start-up can accept deposits from its members without any limit on the quantum of the deposits. Dec 2024 2017 Syllabus (2+2+1=5 marks)

Answer-6 (i) According to Section 76(1) of Companies Act, 2013 read with Rule 3(4) the Companies (Acceptance of Deposits) Rules, 2014, an eligible company, as defined, can accept deposits only up to 10% of its paid-up share capital, free reserves and securities premium account from its members and up to 25% of its paid-up share capital, free reserves and securities premium account from the public. As the section has not made any separate provision for listed companies the prescribed limit is applicable to the listed companies if it is an eligible company. Hence, the statement that any listed company can accept deposit from the public up to its net worth is not correct.

(ii) According to proviso to section 73(2)(f) of the Companies Act, 2013, a company does not secure the deposits or secures such deposit partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits. In such case, the circular inviting deposits in Form DPT-1 shall state that the deposits being accepted are unsecured deposits and that no charge will be created on the assets of the company. Hence, the statement that an eligible company can accept only secured deposits from the public is not correct.

(iii) According to section 73 read with rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, a private Company can accept deposits from its member’s up-

to 100% of aggregate of the paid-up share capital, free reserves and securities premium account. However, this limit is not applicable to a private company which is a start-up, for 10 years from the date of its incorporation. Hence, the statement is correct as this exemption is applicable to a private company which is a start-up, for ten years from the date of its incorporation.

Question-7 Explain the provision for creation of debenture redemption reserve account under the Companies Act, 2013. Also, assess the validity of the Board's proposed action to utilise this reserve

account for payment of interim dividend and conversion of partly paid equity shares into fully paid equity shares. Dec 2024 2017 Syllabus (3 marks)

Answer-7 Section 71(4) of the Companies Act, 2013 read with Rule 18(7) of Companies (Share Capital and Debentures) Rules, 2014, provides that when debentures are issued by a company, the company shall create a debenture redemption reserve account (DRR) out of the profits of the company available for payment of dividend. The amount credited to such account shall not be utilized by the company except for the redemption of debentures. In view of these provisions, the proposed action of the Board to utilize the DRR account for payment of interim dividend and conversion of partly paid equity shares into fully paid equity shares shall not be valid.

Question-8
Case Study
:
Background : Lalit, Bisen, Roma, Raunak, and Rasik, a practicing company secretary, have formed a brainstorming group to discuss, deliberate, and resolve various issues they encounter in their daily works related to company law. They decided to meet every Sundary evening to share their views on issues brought before the group. Several meetings have taken place, and the important issues discussed in detail are outlined below:
Inviting deposits from public by a government company: Rasik mentioned that he is a legal advisor to MNO Corporation Ltd; a government company. The balances extracted from the latest audited financial statements of the company are as follows:

Sr. No.	Particulars	Rs. In crore
1	Paid up equity share capital	10
2	Free Reserves	4
3	Securities Premium Account	2
4	Turnover	300

The company proposes to invite deposits of Rs. 4 crore from public. He analysed the proposal and observed that the deposit amount is within the prescribed statutory limit. He then invited comments from the other group members on the proposal.

As informed by Rasik under Para (v), the government company proposes to invite deposits of Rs. 4 crore from the public. Explain the prescribed limit up to which a government company can invite deposits from the public, and assess whether MNO Corporation Ltd. can invite deposits of Rs. 4 crore. Dec 2024 2022 Syllabus (3 marks)

Answer-8 As per rule 3(5) of the Companies (Acceptance of Deposits) Rules, 2014, no Government Company eligible to accept deposits under section 76 of the Companies Act 2013, shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty-five per cent of the aggregate of its Paid-up share capital, free Reserves, and securities premium account of the company.
As per section 76(1) of the Companies Act, 2013 read with Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014- To become an ‘Eligible Company” the net worth of the company should not be less than Rs. 100 crore or the turnover should be at least Rs. 500 crore. Hence, eligible government company may accept deposits from public to the extent of specified limit.

In the given case scenario MNO Corporation Ltd, a government company does not fulfil any of the criteria of net worth or turnover, as it is less than the threshold limit. Thus, it is not an eligible company. Although the amount of proposed deposits of Rs. 4 crore is within the stipulated limit of

35% of the paid-up share capital, free reserves, and security premium the company cannot invite deposits of Rs. 4 crore from public as it is not an eligible company.

Question-9 Okara Limited, a company. having a net worth of `110 crore and a turnover of `450 crore, wants to accept deposits from the public. Referring to the provisions of the Companies Act, 2013, decide, whether the above company can accept the deposits from the public. (2 Marks)

Answer-9 According to section 76 (1) of the Companies Act, 2013, an "eligible company" means a public company, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.
Okara Limited is having net worth of ` 110 crore. Hence, it falls in the category of 'eligible company' and thus can accept the deposits from public.

Question-10 Dolls Toys Limited is having a net- worth of ` 310 crore, paid up share capital of ` 200 crore, free reserves and security premium of ` 110 crore and turnover of ` 300 crore. Dolls Toys Limited wants to accept deposits form public other than its members.
(i) Referring to the provisions of the Companies Act, 2013, state whether Dolls Toys Limited is permitted to accept the deposits from public other than its members.

(ii) It is further mentioned that Dolls Toys Limited is in urgent need of funds as one of its contract is on the verge of completion and it is promising to repay the deposits within a period of four months. Is Dolls Toys Limited permitted to accept deposits with repayment period of 4 months? (5 Marks)

Answer-10
(i) Whether Dolls Toys Limited is permitted to accept deposits from Public other than its members?
Section 76 of the Companies Act, 2013 read with Companies (Acceptance of Deposits) Rules, 2014 deal with acceptance of deposits from public other than its members by 'eligible companies'. Accordingly, a public company, having net worth of not less than ` 100 crore or turnover of not less than ` 500 crore, and which has obtained the prior consent by a special resolution and filed it with the Registrar of Companies before making any invitation to the Public for acceptance of deposit can accept deposits from persons other than its members.
Eligible Company: As per Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014, a public company, having net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees, may accept deposits from persons other than its members. Such type of public company is known as 'eligible company'.
In the given question, Dollys Toys Limited has a net-worth of ` 310 crore and turnover of ` 300 crore.
Since at least one condition is satisfied that is net worth is ` 310 crore which is more than the prescribed limit, and assuming it has obtained the prior consent by a special resolution and filed it with the Registrar of Companies, it is permitted to accept deposits from public other than its members.
Thus, Dollys Toys Limited is an eligible company and hence can accept deposits from public other than its members.

(ii) Whether Dolls Toys Limited permitted to accept deposits with repayment period of 4 months?

As per Rule 3(1) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposits cannot exceed thirty- six months.

Exception to the rule of tenure of six months: For the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the condition that:

i. such deposits shall not exceed ten per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
ii. such deposits are repayable only on or after three months from the date of such deposits or renewal.

Hence, Dolly Toys Limited is permitted to accept deposits with repayment period of 4 months in compliance to the stated provisions.

However, by virtue of exception to the rule of tenure of six months as stated above, since the company cannot accept the deposit exceeding 10% of the aggregate of the paid up share capital, free reserves and security premium account which is ` 310 crore therefore the company can accept the deposits to the extent of ` 31 crore only.

Question-11 The following are the extracts from the financial statements of BUI Private Limited, which is neither a start-up nor it is an associate or subsidiary company of any other company.

Particulars	Amount ₹
Authorised Capital: 10,00,000 Equity Shares of ₹ 100 each	10,00,00,000
Paid-up Share Capital: 8,00,000 Equity Shares of ₹ 100 each	8,00,00,000
Securities Premium Reserve Account	2,00,00,000
General Reserves	5,00,00,000
Term Loan from LMR Bank Limited	12,00,00,000
Cash Credit Loan (For Working Capital)	5,00,00,000

The company has never failed to file the Annual Return and Financial Statements with the Registrar. The company has already successfully repaid all the monies which were accepted earlier in the form of deposits along with due interest. Since the company was successful in implementation of its housing project by utilizing the money accepted in the form of deposits, the Board was interested to accepting deposits once more and take up another housing project in NOIDA since the members of the company were having sufficient surplus money which they wanted to invest in the company to start the project. However, their condition was that the same will be provided by them if the company accepts them in the form of deposits and the applicable provisions of the Companies Act, 2013 and Rules made thereunder are strictly complied with. But, the Board of Directors of BUI Private Limited were not in support of depositing any amount in any Deposit Repayment Reserve Account for the purpose of repayment of the said deposits, since the repayment was to be made out of the amount received from the customers who were going to book for the flats in the housing project. Two proposals came for review to the Board, out of which only one proposal was to be selected. The Board wanted you to advise them in choosing

the appropriate deposit scheme.
Proposal 1 - Acceptance of Deposits of ` 20,00,00,000, to be repaid with interest @ 7% per
annum;

Proposal 2 - Acceptance of Deposits of ` 14,00,00,000, to be repaid with interest @ 8% per annum.
Referring to the applicable provisions of the Companies Act, 2013, the Rules made thereunder and the notifications issued in this respect, advise the Board stating the justification in support of your advice.

Answer-11

Exemption to certain Private Companies:
Notification No. GSR 464 (E) dated 5th June 2015, provided certain exemptions to Private Limited Companies relaxing the provisions of the Companies Act 2013 with respect to certain restrictions for acceptance of deposits.
The restrictions specified in the clauses (a) to (e) of sub-section (2) of section 73 with respect to certain restrictions for acceptance of deposits like issue of circular, filing the copy of such circular with the Registrar,
depositing of certain amount and certification as to no default committed shall not apply to a private company. They are as follows:
(A) which accepts from its members monies not exceeding one hundred percent of the aggregate of the paid-up share capital, free reserves and securities premium account; or
(B) which is a start-up, for five years from the date of its incorporation; or
(C) which fulfils all of the following conditions, namely:-

a. which is not an associate or a subsidiary company of any other company;
b. if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower; and
c. such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

In the present case, BUI Private Limited was not in support of depositing any amount in any Deposit Repayment Reserve Account for the purpose of repayment of the deposits.
Also, since BUI Limited does not satisfy the conditions given in clause (C) above, as its borrowings from banks is not less than twice of its paid-up share capital or fifty crore rupees, whichever is lower, (i.e. 8 crore*2=` 16 crore and amount already borrowed is `17 crore (i.e Term Loan of ` 12 crore and Working Capital of ` 5 crore), it has to go for the restricted amount as stated in clause
(A) above, i.e. not exceeding one hundred percent of aggregate of the paid-up share capital, free reserves and securities premium account.
Therefore, the maximum amount of deposit it can accept from members will be limited to ` 15 crore.
In terms of the options given in the question, the company has no option but to choose Proposal 2 — Acceptance of Deposits of ` 14,00,00,000, to be repaid with interest @ 8% per annum.

Chapter 7: Charges

Question-1 ABC Limited has created floating charge against debentures issued for Rs. 100 crore. The Board of Directors (BOD) is willing to know the circumstances under which floating charge crystallizes and the security becomes fixed. As a Company Secretary advise the BOD in light of the provisions of Companies Act, 2013. Dec 2023 2017 Syllabus (3 marks)

Answer-1 Floating charge crystallizes and the security becomes fixed in the following cases:

a) When the company goes into liquidation;
b) When the company ceases to carry on its business;
c) When the creditors or the debenture holders take steps to enforce their security i.e., by appointing receiver to take possession of the property charged;
d) On the happening of the event specified in the deed.
In the aforesaid circumstances, the floating charge is said to become fixed or to have crystallised. BOD may be advised, accordingly.

Question-2 Edge Ltd. had borrowed 50 crore from a scheduled bank and repaid entire loan amount along with interest thereon. The company wants to file satisfaction of charge with the Registrar only after receiving no due certificate and a release letter from the bank. If company delays the filing of satisfaction of charge for the default of bank in not issuing these documents, whether the company will be liable for late filing of satisfaction of charge under the Companies Act, 2013? Dec 2023 2022 Syllabus (3 marks)

Answer-2

FACTS:

- Edge Ltd. borrowed ₹50 crore from a scheduled bank and has fully repaid the loan along with interest.
- The company intends to file the satisfaction of charge with the Registrar of Companies (RoC) only after receiving the no due certificate and release letter from the bank.
- Due to delay by the bank in issuing these documents, the company has not yet filed the satisfaction of charge.
- The company seeks to know whether it will be liable for late filing under the Companies Act, 2013, despite the bank's delay.

PROVISIONS:

Section 82 of the Companies Act, 2013 read with rule 8 of the Companies (Registration of charges) Rules, 2014:

- Satisfaction of Charge is another important aspect relating to debts secured by a charge. In case of a full and complete payment of the secured charge registered with the Registrar, the company or charge-holder shall within a period of 30 days from the date of payment or satisfaction in full of any charge registered under Chapter VI of the Companies Act, 2013, give intimation of the same to the Registrar in Form No. CHG-4 along with the prescribed fees. The Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300

days of such payment or satisfaction on payment of such additional fees as may be prescribed.

- On receipt of such intimation, the Registrar shall issue a notice to the holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be

specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar. If no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges maintained by the registrar under section 81 and shall inform the company, that he has done so. If the cause is shown to the Registrar, he shall record a note to that effect in the register of charges and shall inform the company accordingly.

- However, the aforesaid notice shall not be sent, in case intimation to the Registrar is in specified form along with the Letter of the charge holder stating that the amount has been satisfied, which is a mandatory attachment in all cases of Form CHG -4 and is signed by the holder of charge [Proviso to Section 82(2)] Hence, filing of satisfaction of charge after clearance of entire dues of the bank does not depend on obtaining no due certificate from the bank and in absence of which the Registrar will get it confirmed from the lending bank.
- Hence, Edge Ltd. should have filed the same within the time limit and the ROC would have obtained the confirmation thereto from the bank. The company may therefore file it with payment of additional fees for delayed filing of satisfaction of charge.

CONCLUSION:

- The delay by the bank in issuing the no due certificate does not excuse the company from timely filing of satisfaction of charge.
- Edge Ltd. should have filed Form CHG-4 within 30 days from repayment, or within 300 days with additional fees.
- Since the company has delayed the filing, it will be liable for late filing and must now submit the form with applicable additional fees.
- The RoC will seek confirmation from the bank directly if the bank's letter is not attached.

Question-3 After a lot of discussion, negotiation, submission of information and explanations. Enkebee Ltd was sanctioned term loan of ` 200 lakh by the corporate office of Unity Bank on 10th March, 2023. Charge was created on 12th March. 2023. Sayani, Senior Manager (Accounts) of the company, made entry in the register of charges on 19th March, 2023. Sayani believes that the register above shall have to be maintained for at least five years and the instrument creating the charge preserved for twelve years. Offer your comments referring to the provisions of the Companies Act, 2013. June 2024 2017 Syllabus (3 marks)

Answer-3 In accordance with Section 85(1) of the Companies Act, 2013 read with Rule 10(2) of Companies (Registration of Charges) Rules, 2014 the entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case maybe.
Therefore, Sayani — Senior Manager (Accounts) ought to make entry in the Register of Charges maintained by the company in Form No CHG - 7 forthwith after creation of the same on 12th March, 2023. In accordance with Section 85(1) read with Rule 10(2) of Companies (Registration of Charges) Rules, 2014, the register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company.
Thus, views of Sayani Senior Manager (Accounts) are not in order.

Question-4 Rockstar Limited (the company) is having its registered office at

Hyderabad and also set up an establishment in the Germany. It obtained a loan from the German bank creating a charge on the assets of the foreign establishment. The company received a notice from the Registrar of Companies (the Registrar) for not filing the particulars of charge created by the company on the property or assets situated outside India. The company wants to defend the notice on the ground that the company is not required to register the particulars of the charge

created on the assets not located in India. Referring to the provisions of Companies Act, 2013 advise the company, whether the stand taken by the company is correct. Also, apprise the company of the provision regarding the timeline without extension, for registering the particulars of the charge and the effect of its non-registration. June 2024 2022 Syllabus (5 marks)

Answer-4

FACTS:

- Rockstar Limited is a company registered in India with its **registered office in Hyderabad**.
- The company has **an establishment in Germany** and obtained a **loan from a German bank**.
- A **charge was created on the assets of the German establishment** to secure this loan.
- The company **did not register** this charge with the **Registrar of Companies (RoC)** in India.
- The RoC issued a **notice for non-filing of particulars of charge**.
- The company seeks to **defend itself** by stating that the charge is on **foreign assets**, and therefore not registrable under Indian law.

PROVISIONS:

- Registration of the particulars of the charge created:

  According to section 77 of the Companies Act, 2013, it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge. Thus, charge may be created within India or outside India. Also, the subject-matter of the charge i.e. the property or assets or any of the company's undertakings, may be situated within India or outside India. In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment. As per the above provisions, it is the duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and whether situated in or outside India, to register the particulars of the charge. Hence, the stand taken by Rockstar Limited not to register the particulars of charge created on the assets located outside India is not correct.

- Timeline: The particulars of the charge together with a copy of the instrument, if any, creating or modifying the charge shall be filed with the Registrar within a period of 30 days of the date of creation or modification of charge.

- Effect of non-registration of Charges: According to Section 77 (3) of the Companies Act, 2013, where the particulars of the charge created are not filed with the Registrar of Companies, such charge created by a company shall not be taken into account by the liquidator appointed under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016, as the case may be, or any other creditor of the company

CONCLUSION:

- The stand taken by Rockstar Limited is not correct under the Companies Act, 2013.
- The charge created on assets located outside India (Germany) must be registered with the Registrar of Companies in India.

- Failure to register within the prescribed 30-day timeline will render the charge invalid against the liquidator and other creditors.
- Hence, Rockstar Limited must take immediate steps to file the required particulars of the charge, even though the assets are located abroad.

Question-5 NSG Ltd. created a charge in favour of Bank A for a loan it took, and the particulars of the charge have already been registered with the Registrar of Companies. Later, Bank A transferred or assigned this charge to Bank B as part of a loan portfolio sale, without altering any other terms and conditions of the original loan agreement. Are there any compliance requirements related to the registration of charges under the Companies Act, 2013, in this case? Dec 2024 2022 Syllabus (3 marks)

Answer-5

FACTS:

- NSG Ltd. created a charge in favour of Bank A for a loan.
- The charge was registered with the Registrar of Companies (RoC) as per the applicable provisions.
- Bank A subsequently assigned the charge to Bank B as part of a loan portfolio sale.
- No other terms or conditions of the original loan were altered.

PROVISIONS:

- As per section 79 of the Companies Act, 2013: The provisions of section 77 of the Companies Act, 2013, relating to registration of charges shall, so far as may be, apply to −
  a) a company acquiring any property subject to a charge within the meaning of that section; or
  b) any modification in the terms or conditions or the extent or operation of any charge registered under that section.
- The term 'modification' includes variation of any of the terms of the agreement including variation of rate of interest, increase / decrease in amount of borrowings, change / swap of security, extension of time for repayment, which may be by mutual agreement or by operation of law. Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification of charge.
- Section 79 of the Companies Act, 2013 read with Rule 3 of the Companies (Registration of Charges) Rules, 2014, makes it clear that the requirement of registering the charge shall also apply to a company acquiring any property subject to charge or any modification in terms and conditions of any charge already registered.

CONCLUSION:

- Although there is no change in the loan's commercial terms, the assignment of charge from Bank A to Bank B constitutes a modification under the Companies Act, 2013.
- Accordingly, NSG Ltd. is required to register this modification by filing Form CHG-1 with the Registrar of Companies.
- Therefore, the company must comply with the registration requirement to reflect the change in the charge holder from Bank A to Bank B.

Question-6 Naveen Tools Ltd (NTL) mortgaged its factory land and building (by equitable mortgage) on 1st March, 2023 to Goodwill Bank and availed a credit limit of ` 200 lakh. Although the credit limit was sanctioned by the Bank, but the NTL actually availed such credit facility only in the month of August, 2023, when it issued a cheque in favour of a creditor towards the payment of raw material purchased from it.

During the course of statutory audit, the auditor pointed out before the management of the NTL about the non-compliance of registration of charge with the Registrar within the stipulated time. The company officials informed that although the mortgaged backed credit limit was sanctioned in March 2023, but the company had not availed the facility till the month of August, 2023.

So, the liability of registration of charge arises from the date of availment only when the company issued a cheque from the mortgaged backed credit limit account and not when the loan was sanctioned and credit limit was assigned.
Further, the company management pleaded that it is the responsibility of the financier i.e. Goodwill Bank to get the charges registered with the Registrar since the registration of charge is to be effected in favour of the Bank and for Bank's own benefit, so the NTL is in no way responsible for getting registration or for delayed registration.
In the light of above facts, referring to the provisions of the Companies Act, 2013, discuss:
(i) When trigger point for the registration of charge shall arise,
(a) at the time of credit limit sanctioned by the Bank; or
(b) at the time of availing of credit limit when cheque was issued by the company?
(ii) What are the consequences for non-registration of charge on the Naveen Tools Ltd? (5 Marks)

Answer-6
(i) According to section 77(1) of the Companies Act, 2013, it shall be the duty of a company creating a charge to register it with the Registrar of Companies within 30 days from the date of creation of the charge. The obligation to register a charge arises not merely at the time of sanctioning the credit limit but when the charge is created. Whenever a company borrows money by way of loans including term loans or working capital loans from financial institutions or banks or any other persons, by offering its property or assets, as security a charge is created on such property or assets in favor of the lender.
The Trigger point for registration of charge arises when the Bank has sanctioned the mortgaged backed credit limit, documentation was done, papers of the property for creation of the mortgage was tendered by the company for creation of fixation of the credit limits.
Here, the words 'creating a charge' refers to the accepting of the property papers for the purpose of creation of charge. Thus, it is the date when the credit limits were sanctioned as assigned to the company and not the date when the company had actually drawn a cheque from such credit limit.

(ii) Consequence of non-registration of charge [Section 77 (3) & (4)]
No charge created by a company shall be taken into account by the liquidator appointed under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016 or any other creditor unless it is duly registered and a certificate of registration of such charge is given by the Registrar. This means that the charge will become void against the liquidator and other creditors of the company. That is to say, at the time of winding up, the creditor whose charge has not been registered will be reduced to the level of an unsecured creditor. Neither the liquidator nor any other creditor will give legal recognition to a charge that is not registered.
Another important consequence of non-registration is that the charge-holder loses priority. Any subsequent registration of a charge (i.e. even if it is registered within the extended period instead of original thirty days) shall not prejudice any right acquired in respect of any property before the charge is actually registered.

Chapter 8: Distribution of profits

Question-1 Can the Investor Education and Protection Fund be utilized for the activities related to ‘‘Har Ghar Tiranga’’ a campaign under the aegis of Azadi Ka Amrit Mahotsav, under the provisions of Companies Act, 2013? Dec 2023 2017 Syllabus (3 marks)

Answer-1 Section 125(3) of the Companies Act, 2013, provides the Investor Education and Protection Fund shall be utilised for

a) The refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
b) Promotion of investor’s education, awareness and protection;
c) Distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the order made by the Court which had ordered disgorgement;
d) Reimbursement of legal expenses incurred in pursuing class action suits under section 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and
e) Any other purpose incidental thereto, in accordance with Rule of IEPF authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

Thus, as per above provisions, Investor Education and Protection Fund cannot be utilised for the activities related to “Har Ghar Tiranga” a campaign under the aegis of Azadi Ka Amrit Mahotsav, under the provisions of Companies Act, 2013.

Question-2 The Board of Directors of Glass Making Ltd. have decided to declare interim dividend @ 18% for the current financial year of 2023-24. The company has incurred a loss of 107 crore during the current financial year up-to quarter ended on 30th September, 2023. The company has declared dividend in the last four financial years, as below:

Financial Year	Rate of Dividend
2019-20	15%
2020-21	12%
2021-22	15%
2022-23	24%

Examine the decision of the Board of Directors of Glass Making Ltd. as per the provisions of the Companies Act, 2023. Dec 2023 2017 Syllabus (3 marks)

Answer-2 Section 123(3) of the Companies Act, 2023 provides that the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from the closure financial year till holding of the annual general meeting out of the surplus profit and loss account or out of the profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

In case the company has incurred loss during the current financial year upto the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding three financial years.

In the given question, Glass Making Ltd. has incurred loss of Rs. 107 crore during the current financial year till the end of quarter ended on 30th September, 2023, thus company cannot declare interim dividend at a rate higher than the average dividends declared by the company during

immediately preceding three financial years of 2020-21, 2021-22 and 2022-23. Dividend rate of financial year of 2019-20 is not relevant for the declaration of interim dividend. Average rate of dividends during immediately preceding three financial years is 17%, while company has decided to declare interim dividend @18%, which is higher than the average rate of dividend during the immediately preceding three financial years.

Thus, the decision of Board of directors is not as per the provisions of Companies Act, 2023.

Question-3 Referring to the provisions of the Companies Act, 2013 read with Secretarial Standard-3 (SS-3) and requirement of the Board. Explain the meaning of ‘‘Divisible Profit’’ and can interim dividend be paid by the company out of free reserves, in the event of loss or inadequacy of profit during a financial year? Dec 2023 2022 Syllabus (5 marks)

Answer-3 ‘Divisible profits’ means the profits which the law allows the company to distribute to the shareholders by way of dividend. According to Palmer’s Company Law, the terms ‘divisible profits’ and ‘profits in the legal sense’ are synonymous. Thus, the profits of a business mean the net proceeds of the concern after deducting the necessary outgoings without which those proceeds could not be earned. [Bharat Insurance Co. Ltd. v. CIT (1931) 1 Com Cases 192, 196 (Lah)].

Divisible profits are that portion of the profit which can be distributed legally among the shareholders of the company. These profits are distributed by way of dividends, but only after provisions for past losses and reserves have been made.

Interim Dividend
As per Section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.
In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years. It is also provided in Article 81 of table F that Subject to the provisions of section 123, the Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company.
Therefore, before approving payment of interim dividend, the directors should satisfy themselves that the profit is available for distribution by way of dividend.
SS-3 provides that in the event of a loss or inadequacy of profits during a financial year, no Interim Dividend shall be declared/ paid out of Free Reserves. Hence, in this case interim dividend cannot be declared by the Board of directors

Question-4 With reference to the provisions of Companies Act, 20l3 and the applicable Rules, explain the procedure for transfer and refund of dividend remaining unpaid/unclaimed for less than seven years. June 2024 2017 Syllabus (3 marks)

Answer-4 According to Section 124 of Companies Act, 2013 (the Act), when dividend, has been declared by company but has not been paid by the company or not claimed by the shareholder within 30 days of the date of declaration of dividend, the company shall, within 7 days from the expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid

or unclaimed to a special account to be opened in a scheduled bank called unpaid dividend account.
Any member entitled to any money transferred u/s 124(1) of the Act as unpaid dividend may apply to the company u/s 124(4) for the payment of unpaid dividend up to a period of 7 years from the date of transfer to the unpaid dividend account.

Effects of non-transfer of the dividend:
As per section 124(3) of the Companies Act, 2013 if any default is made in transferring the total amount referred in section 124(1) of the Act or any part thereof to the unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much amount as has not been transferred to the said account, at the rate of 12% per annum and interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them. Section 124(5) of the Companies Act 2013 states that any money transferred to the unpaid dividend account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued if any thereon to the Investor Education and Protection fund.

Question-5 Prepare a checklist to be submitted to your Executive Director containing disclosure(s) to stock exchange after conclusion of board meeting and notice of book closure as a procedural step for declaration and payment of final dividend of Silence Ltd., a quoted company. June 2024 2017 Syllabus (5 marks)

Answer-5 Disclosure(s) to stock exchange after the conclusion of a board meeting by Silence Ltd. a listed company
In the case of a listed company, not later than 30 minutes of the closure of the Board meeting, intimate the stock exchanges with regard to the Board's decision about the declaration and payment of dividends [Regulations 30 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 read with Schedule III].

Notice of book closure:
Rule 10 of Companies (Management and Administration) Rules, 2014 mentions to publish notice of book closure in a newspaper circulating in the district in which the registered office of the company is situated and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company at least seven days before the date of commencement of book closure and in such manner as may be specified by Securities and Exchange Board of India

In case of listed companies:

(i) To give notice in advance of at least 7 working days (excluding the date of intimation and the record date) or as many days as the stock exchange may prescribe, before the closure of transfer books or record date, specifying the purpose of Record Date [Regulation 42 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015]. The company shall recommend or declare all dividend at least five working days (excluding the date of intimation and the record date) before the record date fixed for the purpose.

(ii) Time gap between two book closures would be at least 30 days [Regulation 42(4) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015].

Question-6

Case Study

Manoranjan, a young Journalist and MBA with flair for writing started a small net-based business of content writing in the year 2011 by the name–Nirbheek Contents. Initially, his business focused on website copywriting and business blog writing. Riding the wave of sourcing work from India by western countries, his business grew quite rapidly.

Having taken the business to the highest level his focus shifted from writing contents himself to have a team to write content. He personally monitored them to ensure quality. In the year 2016, he formed a media company namely (MTR) Ltd. in Delhi and had a team of fifty persons who were working with him on regular basis.

With the initiative of Manoranjan being very ambitious and positive about his business MTR Ltd. expanded the business by entering into the business of printing books, journals, exporting printed material to the foreign clients etc. After few years the Board decided for demerging its both business where MTR Limited (MTR or ''Demerged Company'') shall remain engaged in media business and a new company i.e., ATR Limited (ATR or ''Resulting Company'') which was formed will engage in the printing business.

The Board of Directors of MTR & ATR approved the scheme of arrangement in their respective meetings. Accordingly, the complete printing business, as a going concern of the demerged entity, was required to be transferred including its assets and liabilities which belong to the printing business of the demerged company to the resulting company. However, the immovable properties were excluded from the deal.

A meeting of members of MTR Limited was convened under the order of the Hon'ble NCLT to consider a scheme of compromise and arrangement. Notice of the meeting was sent in the prescribed manner to all the 1200 members holding in the aggregate 1,00,00,000 shares. The meeting was attended by 900 members holding 60,00,000 shares. 420 members holding 44,00,000 shares voted in favor of thc scheme. 360 members holding 12,00,000 shares voted against the scheme. The remaining members abstained from voting.

A group of creditors of MTR Limited was against the ongoing scheme of arrangement and they made a complaint to the concerned Registrar of Companies (the Registrar) alleging that the management of the company has indulged in destruction and falsification of the accounting records of the company and proposed scheme is not in the interest of the unsecured creditors.

The registered office of ATR Ltd. is presently situated in the premises of MTR Ltd. However, in order to have a separate registered office for corporate business ATR Ltd. hired the premises in the same city where its registered office will be shifted after complying with the legal formalities.

XYZ Limited, an associate company of MTR Limited, has a paid-up capital of ₹ 460 lakhs and accumulated free reserves of ₹ 740 lakhs. Loss for the year ending 31st march, 2023 is ₹ 74 lakhs.

Dividend was declared at the following rates during the three years immediately preceding to the year 2022-23 :

Year 1	10%
Year 2	12%
Year 3	14%

Based on the above information and referring to the provisions of the Companies Act, 2013 answer the following :

a. What is the maximum rate at which the dividend can be declared by XYZ Limited? June 2024 2022 Syllabus (3 marks)
b. What is the amount available for declaration of the dividend subject to fulfillment of other conditions in case XYZ Limited declares the dividend? June 2024 2022 Syllabus (3 marks)

Answer-6 a. In the case of XYZ Limited there is inadequacy or absence of profits during the current year ending on 31st March, 2023. Hence, as per rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, the rate of dividend declared shall not exceed the average of the rate at which dividend was declared by it in the immediately preceding 3 financial years. The average rate of dividend is 12% (10%+12%+14% divided by 3) and the maximum amount of dividend can be Rs. 55.2 lakh (12% of Paid-up Capital i.e. Rs. 460 lakhs

b. Total amount to be drawn from such accumulated profits shall not exceed 1/10th of the sum of its paid-up share capital and free reserves as per the last audited financial statements.

The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
Paid-up capital + Free reserves = Rs. (460+740)
Lakhs (Total paid up capital & free reserves) = Rs.
1200 Lakhs 10% thereof − Rs. 120 Lakhs
Less: loss for the year – Rs. 74 Lakhs Amount available = Rs.
46 Lakhs Hence, the quantum of dividend is further
restricted to Rs. 46 lakhs.

Question-7 Board of Directors of XYZ Limited proposed the dividend at 12% on equity shares for the financial year 2023-24. The same was approved in the annual general meeting of the company held on 10th September, 2024. The Managing Director seeks your opinion on the following under the provisions of the Companies Act, 2013 :

(i) Akar, holding equity shares of face value of 10 lakhs, has not paid an amount of Rs. 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

(ii) Akruti was the holder of 1,000 equity shares on 31st March, 2024, but she transferred the shares to Raka, whose name has been registered on 20th May, 2024. Who will be entitled to the above dividend? Dec 2024 2017 Syllabus (5 marks)

Answer-7 (i) The given problem is based on the exception provided in section 127 (d) of the Companies Act, 2013. As per the law, where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder. As per the facts given in the question, Akar is holding equity shares of face value of Rupees 10 Lakhs and has not paid an amount of Rupees 1 lakh towards call money on shares. Referring to the above provision, Akar is eligible to get Rupees 1.20 lakh towards dividend, out of which an amount of Rupees 1 lakh can be adjusted towards call money due on his shares. Rupees 20,000 can be paid to him in cash or by cheque or by any electronic mode. According to the above-mentioned provision, the company can adjust the sum of Rupees 1 lakh due towards calls in arrears on shares against the dividend amount payable to him.

(ii) According to section 123(5) of the Companies Act, 2013, the dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Akruti the holder of equity shares, transferred the shares to Raka whose name has been registered on 20th May 2024. Since he became the registered shareholder before the declaration of the dividend in the Annual General Meeting of the company held on 10th September 2024, Raka, being the registered holder and not Akruti shall be entitled to the dividend and not Akruti.

Question-8 “Green Initiative” is a Section 8 company, which has been operating successfully for the past 10 years, primarily engaged in environmental conservation and social welfare activities. Many big public limited companies funded the company toward CSR activities. Due to this, over the years, the company has accumulated substantial reserves and surplus funds. The company is now planning to declare dividend in the annual general meeting to be held with respect to the financial year ended 31st March, 2024. Can the company utilise the surplus/ reserves so

accumulated for declaration of dividend in accordance with the provisions of the Companies Act, 2013 ? Dec 2024 2017 Syllabus (3 marks)

Answer-8 Dividend can be declared by all types of companies except section 8 companies (i.e companies with charitable objects etc.) which prohibit the payment of any dividend to its members. According to Section 8(1)(c) of the Companies Act, 2013, the company having license under

Section 8 (Formation of Companies with Charitable Objects etc.) are prohibited from paying any dividend to its members. Their profits are intended to be applied only in promoting the objects of the Company.

In the above case Green Initiatives., a section 8 company was planning to declare dividend. As per the provisions of section 8 a company registered under this section is prohibited from declaring dividend. Hence, Green Initiatives, which is planning to declare dividend, cannot do so according to the provisions of the Companies Act, 2013.

Question-9 Draft a specimen format of minutes of the board meeting and include therein a specimen resolution passed for declaration of interim dividend in the light of the provisions of the Companies Act, 2013. Dec 2024 2017 Syllabus (4 marks)

Answer-9 Specimen Minutes of Board Meeting of Ltd.

Minutes of the -- meeting of the Board of Directors of-----Ltd held on (Day), (Date, Month and Year) at ----(Venue) from (Time of commencement)

Present
A.B Chairman
C.D Director
E.F Director
G.H Managing Director In attendance
X Company Secretary
Item No.-----Interim Dividend

1. Chairman for the Meeting
   Mr/Ms.....was elected as the Chairman for the Meeting.
2. Leave of absence
   Leave of absence from attending the Meeting was granted to Mr. M.N. and Mr. O.P. who expressed their inability to attend the Meeting owing to their preoccupation.
3. Quorum
   The business before the Meeting was taken up after having established that the requisite quorum was present.
4. Minutes of the previous Board Meeting
   The Minutes of the .....Meeting of the Board of Directors of the company held on
   ....., as circulated, were noted by the Board and signed by the Chairman.
5. Register of Contracts
   The Register of Contracts in which Directors are interested under Section 189 of the Companies Act, 2013 and the Rules thereunder was signed by all the Directors present.
6. Approval and payment of Interim Dividend
   The payment of interim dividend for the year ending was considered on the basis of
   unaudited Financial Statements of the company for the FY as annexed to the Note
   under reference. The Directors are of the view that the company has earned adequate profits for the year to consider payment of interim dividend.

The Board, after discussion, passed the following resolution unanimously:
"RESOLVED THAT an Interim Dividend of Rs. ___(at the rate of ... percent) on each fully paid-up equity share of Rs. _____ of the Company amounting to Rs..... be paid out of the profits of the Company for the half year ended
..... 20.. to those Members of the Company whose names would appear on the Register of Members of the Company on the ..... day of , 20...being the
Record date for payment of Interim Dividend. RESOLVED FURTHER THAT a separate bank account be opened in the name of the Company with Bank at its Branch at

..... and a sum of Rs....., being the total Interim Dividend amount, be deposited in the said account within five days from the date of declaration. RESOLVED FURTHER THAT Mr....., Director and Mr....., Company Secretary be and are hereby jointly authorised to open the bank account by signing the account opening form and by furnishing to the said bank the required papers, documents and information and completing all other required formalities for the purpose of opening the bank account and to make arrangements with the said bank for the payment at par, of the Interim Dividend within thirty days from the date of declaration.

RESOLVED FURTHER THAT Mr. ....., Director and Mr..... ....., Company Secretary of the company, be and are hereby authorised to jointly sign the Dividend warrants to be issued on the said bank and the said bank be and is hereby authorised to honour the Interim Dividend warrants jointly signed by the said authorised signatories, as and when presented for encashment."

7. Summary of proceedings
   The Chairman summarized the proceedings of each item of business transacted at the meeting for the benefit of the members.
8. Vote of thanks
   As there was no other business to transact, the meeting concluded with a vote of thanks to the Chair. The meeting concluded at (time).

Signed by Chairman
Dated:
Place:

Question-10 Chitra Developers Limited, a listed company, adopted Articles of Association as per Article 84 of Table F of Schedule I under the companies Act, 2013, held a Board of Directors meeting on 1st February 2024, during which an interim dividend of 10% was declared. The dividend amount was transferred to a separate bank account within the prescribed timeline. However, in a subsequent Board meeting on 10th February 2024, the Board resolved to revoke the declared interim dividend. The separate bank account was closed, and the dividend amount was transferred back to the company's general bank account.

In the Board meeting held on 5th August 2024, the financial statements for the year ending 31st March 2024 were approved, and the Board proposed a final dividend of 10%. At the Annual General Meeting (AGM) held on 10th September 2024, the shareholders decided to declare a final dividend at a rate of 20%, considering the earlier revocation of the interim dividend. Considering the provisions of the Companies Act, 2013 :

(i) Discuss the validity of the Board's decision to declare and subsequently revoke the interim dividend. Additionally, specify the date by which the company should have deposited the interim dividend amount into a separate bank account.

(ii) Evaluate whether the shareholders' decision to declare a final dividend at the rate of 20%, instead of the 10% proposed by the Board, is legally valid. Dec 2024 2022 Syllabus (5 marks)

Answer-10

(i) Validity: Authority to declare interim dividend: As per Section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim

dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting.

Time limit to open a separate bank account: In terms of sub-section (4) of Section 123 of the Companies Act, 2013, the amount of Dividend, including Interim Dividend, shall be deposited in a scheduled bank in a separate account within 5 days from the date of declaration of such

Dividend.

Revocation of Dividend: The right of Members to claim Dividend arises only after the Dividend is declared either by the company in an Annual General Meeting or, in the case of Interim Dividend, by the Directors in a Board Meeting. Until and unless it is so declared, no Member has any claim against the company in respect thereof, even though the company may have sufficient profits [Bacha F. Guzdar v Commissioner of Income Tax 1955 AIR SC 740].

Members cannot compel the company by any process of law to declare Dividend [C.W. Spencer
V. ITO, (1957) 27 Comp. Cases 15, 25 (Mad)].

A Dividend once declared becomes a debt due to the Members and hence cannot be revoked. It gives rise to an enforceable obligation or creates a debt enforceable immediately or in the future.

Conclusion: The Board of directors are the competent authority to declare interim dividend in the Board meeting. Hence, the declaration of interim dividend by the Board of directors in its meeting held on 1st February, 2024 is valid. The interim dividend declared by the Board has become debt and it cannot be revoked. Hence, the revocation of interim dividend by the Board in the board meeting of 10th February, 2024 is not valid.

Time limit: In accordance with the provision, the company should have opened a separate bank account to deposit the interim dividend amount by the latest date of 6th February 2024, which is within 5 days from 1st February 2024, the date of declaration of the interim dividend.

(ii) Shareholders increasing the proposed rate of dividend: The dividend recommended by the board of directors as mentioned in the Directors Report is declared at the annual general meeting of the company
Article 80 of Table F of schedule 1 Companies Act, 2013, states that “the company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.”

The shareholders have no right to declare a final dividend in the annual general meeting at a rate exceeding the rate proposed by the Board. Hence, the decision of the shareholders to declare the dividend @ 20% which is more than the rate of 10% proposed by the Board, is invalid.

Question-11 Abbas is a member of PTR Ltd., an unlisted company that has adopted Articles of Association as per Article 84 of Table F of Schedule I under the Companies Act, 2013, concerning the adjustment of dividends. Abbas owes to the company a total sum of Rs. 10,000, broken down as follows:
Calls in arrears: Rs. 3,000
Unpaid Securities Premium: Rs.
5,000 Other Debts: Rs. 2,000
PTR Ltd. has declared a dividend of Rs. 10,000 on the shares owned by Abbas. The company proposes to adjust the total debts of Abbas of Rs. 10,000 against the dividend payable to him. As the Company Secretary of PTR Ltd., how would you

respond to the company’s proposal to adjust the debts against the dividend payable to Abbas in accordance with the provisions of the Companies Act, 2013? Dec 2024 2022 Syllabus (3 marks)

Answer-11

FACTS:

- Abbas is a member of PTR Ltd., an unlisted company.
- PTR Ltd. has adopted the Articles of Association as per Article 84 of Table F of Schedule I to the Companies Act, 2013.
- Abbas owes the company a total of ₹10,000, broken down as:
  - Calls in arrears: ₹3,000
  - Unpaid Securities Premium: ₹5,000
  - Other debts (unrelated to shares): ₹2,000
- PTR Ltd. has declared dividend of ₹10,000 on Abbas's shares and proposes to adjust the entire dividend against these dues.

PROVISIONS:
Article 84 of Table F of Schedule I to the Companies Act, 2013 provides that, Board may deduct from any Dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

According to Section 127(d) of Companies Act, 2013, no offence under this section shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

CONCLUSION:
- PTR Ltd. is legally entitled to adjust from the dividend:
  - ₹3,000 (calls in arrears)
  - ₹5,000 (unpaid securities premium)
    These amounts are directly related to the shares held by Abbas and fall within the scope of Article 84.
- However, the "other debts" of ₹2,000 are not related to shares, and cannot be adjusted against dividend under Article 84.
- Therefore, as Company Secretary, you should advise the Board that:
  - Only ₹8,000 of the dividend can be adjusted against dues related to shares.
  - The remaining ₹2,000 of dividend must be paid to Abbas unless he voluntarily authorizes adjustment of the unrelated debt.

Question-12 XYZ Limited is a company having a paid up equity share capital of ` 75 crore. Though it was performing well in the recent years it suffered losses in the first and second quarter of the financial year 2023-2024. In order to sustain its image, the Board of Directors declared an interim dividend at the rate of 30 percent on the paid-up equity share capital on 4/10/2023. The following are the additional information extracted from the books of account for the past 5 Financial Years:

Financial year ending 31 March	Rate of Dividend declared
2019	20%
2020	15%
2021	15%
2022	15%
2023	30%

Examining the provisions of the Companies Act, 2013, decide the validity of the Board's declaration of 30% interim dividend. (5 Marks)

Answer-12 As per section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.
Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.
According to the given facts, XYZ Ltd. is facing losses in business during the first and second quarter of financial year 2023-2024. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 15% and 30% respectively. Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates (15+15+30=60/3) at which dividend was declared by it during the immediately preceding three financial years.
Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 30% during the F.Y. 2023-2024 is not valid.

Question-13 Manish, a shareholder of a company has not claimed his dividends from the company for the last 10 years due to different reasons. He wants to know whether he will be able to recover the dividends declared by the company for all these years. Explain to him, the relevant legal provisions.

Answer-13 Section 124 of the Companies Act, 2013 contains the provisions relating to Unpaid Dividend Account (UDA).

Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account.

Where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of declaration, the company shall, within 7 days from the expiry of the said period of 30m days, transfer the total amount of unpaid or unclaimed dividend to a special account called the 'Unpaid Dividend Account' which shall be opened in any scheduled bank.
If any money transferred to this Unpaid Dividend Account remains unpaid or unclaimed for a period of seven years from the date of transfer of such account, it shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund established under section 125(1) of the Companies Act, 2013 maintained and administered by the Central Government.

As per section 124(6) of the Act, all shares in respect of which the dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.

As per the facts of the question, Manish, a shareholder of the company has not claimed his dividends from the company for the last 10 years. Eventually, after expiry of the 7th consecutive year, the shares of Manish along with the dividends due to him for the last 10 years would have been already transferred by the company to the Investor Education and Protection Fund along with a statement containing the prescribed details.
Therefore, Manish should claim his shares along with the dividends due from IEPF in accordance with the prescribed procedure and on submission of prescribed documents.

Chapter 9: Accounts and auditors

Question-1 Fine Industry Ltd. is registered under the Companies Act, 2013 having registered office at New Delhi. Company is engaged in manufacturing of various household products. Main manufacturing unit of the company is located in Singrauli District of Madhya Pradesh. The Board of Directors (BOD) has decided to keep books of account of the company at its Singrauli manufacturing unit. The Company Secretary of the company objected and states that the books of account of the company can be kept at its registered office only. Referring to the provisions of the Companies Act, 2023, examine, whether the objection of the Company Secretary is valid? Dec 2023 2017 Syllabus (3 marks)

Answer-1

FACT:

- Fine Industry Ltd., a company registered under the Companies Act, 2013, has its registered office in New Delhi.
- The company's main manufacturing unit is located in Singrauli, Madhya Pradesh.
- The Board of Directors has decided to keep the books of account at the manufacturing unit in Singrauli.
- The Company Secretary objected, stating that books of account must be kept only at the registered office.

PROVISIONS:

Section 128(1) of the Companies Act, 2013 read with rule 2A of the Companies (Accounts) Rules, 2014, requires every company to prepare and keep the books of accounts and other relevant books and papers and financial statements at its registered office. However, all or any of the books of accounts may be kept at such other place in India as the Board of Directors may decide. When the Board so decides, the company is required within seven days of such decision to file with the Registrar of Companies (RoC) a notice in writing giving full address of that other place. Such intimation is to be made in form AOC-5 to the Registrar of Companies.

CONCLUSION:

- The objection raised by the Company Secretary is not valid.
- As per the Companies Act, 2013, Fine Industry Ltd. is permitted to keep its books of account at the Singrauli manufacturing unit, provided:
  - The decision is approved by the Board of Directors, and
  - Form AOC-5 is filed with the Registrar of Companies within 7 days.

Thus, the Board's decision is legally valid and in compliance with the Act, subject to fulfilling the procedural requirement.

Question-2 AB Pvt. Ltd. is unlisted material subsidiary of HD Ltd. which is a listed entity. It is the strong conviction of the Company Secretary of HD Ltd. that secretarial audit for AB Pvt. Ltd. is not required for two reasons such that it is a private company and secondly an unlisted company. Based on the information and input data provided above, referring to the provisions of the Companies Act, 2013 you are requested to examine/analyse and answer the following: Explaining the requirement and timeline for submission of secretarial compliance report by a listed entity, state whether the Secretarial Audit of AB Pvt. Ltd. is voluntary in light of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ?

UNIQUE ACADEMY FOR COMMERCE

Also, explain the meaning of material subsidiary. Dec 2023 2022 Syllabus (3 marks)

Answer-2

FACTS:

- AB Pvt. Ltd. is an unlisted material subsidiary of HD Ltd., which is a listed company.
- The Company Secretary of HD Ltd. believes secretarial audit of AB Pvt. Ltd. is not required because AB Pvt. Ltd. is a private and unlisted company.

PROVISIONS:

As per section 204(1) of the Companies Act, 2013, every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed. As per rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, for the purposes of section 204(1), the other class of companies shall be as under

a. Every public company having a paid-up share capital of fifty crore rupees or more; or
b. Every public company having a turnover of two hundred fifty crore rupees or more; or
c. Every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.

Further, as per Regulation 24A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [SEBI (LODR) Regulations], every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex a Secretarial Audit Report given by a Company Secretary in Practice, in such form as specified, with the annual report of the listed entity. Hence, secretarial audit for AB Pvt. Ltd, is compulsory and not voluntary.

Every listed entity shall submit a Secretarial Compliance Report in such form as specified, to stock exchanges, within sixty days from end of each financial year.

As per explanation to Regulation 24(1) of the SEBI (LODR) Regulation, 2015 "Material Subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed company and its subsidiaries in the immediately preceding accounting year.

CONCLUSION:

- The Company Secretary's contention that secretarial audit of AB Pvt. Ltd. is not required is incorrect.
- Since AB Pvt. Ltd. is a material unlisted subsidiary of the listed HD Ltd., it is mandatory under SEBI LODR Regulation 24A to conduct secretarial audit for AB Pvt. Ltd.
- The listed entity, HD Ltd., must submit a Secretarial Compliance Report to the stock exchanges within 60 days from the end of each financial year.
- Therefore, secretarial audit of AB Pvt. Ltd. is not voluntary but a statutory requirement under the applicable provisions.

Question-3 Mithi Sugar Limited has on its Board, four directors viz A, B, C and D. In addition, the company has Mr. R as the Managing Director. The company also has a full time Company Secretary, Mr. Anupam, on its rolls. The financial statements of the company for the year ended 31st March, 2023 were authenticated by two of the directors, Mr. A and Mr. B under their signatures. Referring to the provisions of the Companies Act, 2023:

i. Examine the validity of the authentication of the Financial Statement including

Balance Sheet and Statement of Profit & Loss etc. and the Boards Report. Dec 2023
2022 Syllabus (3 marks)

ii. What would be your answer in case the company is a One Person Company (OPC) and has

only one Director, who has authenticated the Financial Statement including Balance Sheet and Statement of Profit & Loss and the Board's Report? Dec 2023 2022 Syllabus (3 marks)

Answer-3

PROVISION:
According to section 134(1) of the Companies Act, 2013 the financial statement, including Consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by:
(a) The chairperson of the company where he is authorized by the Board; or
(b) Two directors out of which one shall be managing director, if any; and
(c) The Chief Executive Officer, the Chief Financial Officer and the Company Secretary of the company, wherever they are appointed.

Further, section 134(6) of the Companies Act, 2013 provides that the Board's report and any annexures thereto shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

In given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. A and Mr. B, the directors. In view of the provisions of Section 134(1) of the Act, the Managing Director Mr. R should be one of the two signatories. Since, the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit & Loss Account. Boards Report is required to be signed by the chairperson of the company or by the two directors, one of whom shall be the managing director.

CONCLUSION:
As per the prescribed provisions stated above, Mr. R being the managing director and any of other director (A or B or C or D) can sign the Board Report. Therefore, authentication done by two directors (i.e. Mr. A and Mr. B) is not valid.

ii. As per section 134(1) of the Companies Act, 2013, in case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon.
In the given case, the financial statements including Balance Sheet and Statement of Profit & Loss and Board's Report should be signed by one director and hence, the authentication is in order

Question-4 Comment on the following : ''Every company is mandated to obtain annual secretarial audit report and annual secretarial compliance report from its statutory auditor.'' June 2024 2017 Syllabus (5 marks)

Answer-4 According to Section 204(1) of Companies Act, 2013 (the Act), read with Rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the following companies are required to annex with its Board's Report under section 134 of the Act, a Secretarial Audit Report given by a company secretary in practice in Form MR-3:
a) Every listed company; or
b) Every public company with a paid-up equity share capital of Rs. 50 crore or more

c) Every public company with a turnover of Rs. 250 crore or more or d) Every company having outstanding loan from banks or public financial institutions of Rs.100 crore or more.

According to Regulation 24A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), every listed entity and its material unlisted subsidiary(ies) incorporated in India shall undertake secretarial audit and shall annex a secretarial audit report given by a company secretary in practice in Form MR-3 along with the annual report of the listed entity as per Schedule V of LODR.

According to Regulation 24A of LODR, every listed company shall also submit secretarial compliance report to the stock exchanges within 60 days from end of financial year.

The annual secretarial compliance report, apart from the coverage on compliance of laws applicable to the listed company, also requires the practicing company secretary to report on compliance of all applicable SEBI regulations, circulars and guidelines to the stock exchanges.

Thus, the given statement that every Company is mandated to obtain annual secretarial audit report and annual secretarial compliance report is not correct. The statutory auditor of the company is a practicing-chartered accountant. Under Section 143 of the Companies Act, 2013, the statutory auditor is required to audit the financial accounts of the company and give his opinion whether the financial statements give a true and fair view of the state of affairs of the company.

The statutory auditor has no role in certifying the annual secretarial audit report or annual secretarial compliance report. Thus, the second part of the statement is also incorrect.

Annual secretarial audit report is different from annual secretarial compliance report. Both Annual secretarial audit report and Annual secretarial compliance reports are given by a practicing company secretary and not by the statutory auditor.

Thus, the second part of the statement is also incorrect.

Question-5 Chirag Ltd. has achieved a turnover ` 30 crore for the year ended 31st March, 2024. The Chief Operating Officer (COO) of the company is in a dilemma of cost audit would be applicable on the basis of turnover. You are a corporate consultant. Please advise the company about applicability of Cost Audit with reference to provisions of Companies Act, 2013.June 2024 2017 Syllabus (3 marks)

Answer-5 Rule 4 of Companies (Cost Records and Audit) Rules, 2014 provides for applicability of cost audit. Accordingly,
1) Every company specified in item (A) of rule 3 of Companies (Cost Records and Audit) Rules, 2014 i.e. regulated sectors shall get its cost records audited in accordance with these rules if the overall annual turnover of the company from all its products and services during the immediately preceding financial year is rupees fifty crore or more and the aggregate turnover of the individual product or products or services for which cost records are required to be made under rule 3 is rupees twenty five crore or more. 2) Every company specified in item (B) of rule 3 of Companies (Cost Records and Audit) Rules, 2014 i.e. non-regulated sectors shall get its cost records audited in accordance with these rules if the overall annual turnover of the company from all its products and services during the immediately preceding financial year is rupees one hundred crore or more and the aggregate turnover of the individual

product or products or service or services for which cost records are required to be made under rule 3 is rupees thirty five crore or more.
3) The requirement of cost audit under these rules shall not apply to a company which is covered in rule 3, and
i) whose revenue from exports in foreign exchange exceeds seventy five percent of its total revenue; or ii) which is operating from a SEZ.

iii) which is engaged in generation of electricity for captive consumption through captive generating plant. In the given case, the turnover of Chirag Ltd. is Rs. 30 Crore. The company is advised that if the company operates in regulated sector, and the aggregate turnover of the individual product(s) / service(s) is Rs. 25 crores or more, then, cost audit will be applicable.
If it operates in non-regulated sector, cost audit is not applicable, as the turnover of the company does not meet the criteria prescribed in the Rules.

Question-6 The Board of Directors of Green Stone Limited (the company) consists of total 8 executive directors and 2 non-executive directors. 4 executive directors in collusion with the auditor of the company manipulated the accounts of the company in their own interest. By knowing the conspiracy, the other directors decided to file an application before the Nation Company Law Tribunal (the Tribunal) to pass the order for the removal of the auditor. In view of the given facts and referring to the provisions of the Companies Act, 2013 advise the applicant directors:

(i) Whether the Tribunal is a competent authority to entertain the application of few directors for removal of auditor of the company?

(ii) Will the auditor of Green Stone Limited be eligible to be appointed as an auditor of other company, if he is removed by the order of the Tribunal? June 2024 2022 Syllabus (3+2=5 marks)

Answer-6 Given problem is based on removal of auditor by Tribunal in event of fraud u/s 140(5) of the Companies Act 2013.
As per the provisions of Section 140(5) of the Companies Act, 2013, the Tribunal may either

- Suo motu or
- on an application made to it by the Central Government or
- by any person concerned,
- if it is satisfied that the auditor of a company has whether directly or indirectly acted in a fraudulent manner, or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

Section further states that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within 15 days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

An auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

Based upon the above provision. we may conclude as follow:
(i) This Section authorizes the Tribunal to pass order for directing the company to change the auditor. However, the Tribunal shall not directly remove the auditor. The application is tenable as it is made by the persons concerned.
(ii) Auditor pf Green Stone Limited so removed shall not be eligible for appointment as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

Question-7 State, whether the following persons are eligible to be appointed as auditor of a company under the provisions of the Companies Act, 2013 :

(i) Directors of MNO Ltd. (the company) want to appoint Keshav, a fellow member of ICAI

and practicing Chartered Accountant as an auditor of the company. Naveen, one of the partners of Keshav's CA firm, has given guarantee for ` 1.10 lakhs only in connection with indebtedness of any third person to a subsidiary of the company.

(ii) Directors of DEF Ltd. want to appoint Aryaman, a practicing Chartered Accountant as an auditor of the company. Aryaman is indebted to the company for ` 4,95,000.

(iii) Manju is working as purchase manager in RST Ltd. directors RST Ltd. want to appoint Vaibhav, husband of Manju as an auditor of the company. June 2024 2022 Syllabus (2+2+1=5 marks)

Answer-7

(i) As per section 141(3)(d)(iii) of the Companies Act, 2013 read with rule 10 of the Companies (Audit and Auditors) Rules, 2014, an auditor is disqualified to be appointed as an auditor if he or his relative or partner has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of one lakh rupees. In the given situation, Keshav will be disqualified to be appointed as an auditor of MNO Ltd as his partner (i.e. Naveen) had given a guarantee for Rs. 1.10 lakhs (i.e. more than the limit of Rs. 1 lakh), in connection with the indebtedness of any third person to the subsidiary of the company.

(ii) As per section 141(3)(d)(ii) of the Companies Act, 2013 read with rule 10 of The Companies (Audit and Auditors) Rules, 2014, an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs. In this case, Aryaman will not be disqualified to be appointed as an auditor of DEF Ltd. As he is indebted to DEF Ltd. for Rs. 4,95,000 which is within the limit (i.e. less than Rs. 5 lacs)

(iii) In this case, since Manju, wife of Vaibhav, (Chartered Accountant) is the Purchase Manager (not a director or KMP) of RST Ltd. Hence, Vaibhav will not be disqualified to be appointed as an auditor in the said Company

Question-8 Discuss the primary objectives of the National Financial Reporting Authority (NFRA) as enshrined under the Companies Act, 2013. Dec 2024 2017 Syllabus (3 marks)

Answer-8 As per Section 132 of the Companies Act, 2013 read with the National Financial Reporting Authority Rules 2018, the Central Government has introduced a new regulatory authority named as National Authority for Financial Reporting known as National Financial Reporting Authority (NFRA) with wide powers to recommend, enforce and monitor the compliance of accounting and auditing standards. The objectives of National Financial Reporting Authority inter alia shall be as follows:

(1) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;

(2) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;

(3) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in

quality of service and such other related matters as may be prescribed; and a

(4) perform such other functions as may be prescribed in relation to aforementioned objectives.

Question-9 ABC Ltd. is engaged in the manufacturing of automobiles. It has a Board of Directors comprising of 5 members, including a Managing Director, a Whole-Time Director in charge of

finance, and a Chief Financial Officer.

During a recent audit, it was discovered that the company's books of accounts were not maintained properly. There were discrepancies in inventory valuation, and certain transactions were not recorded accurately. The auditors pointed out that the financial statements prepared were not disclosing a true and fair view of the company's financial position.

Identify the persons who could be held responsible for the irregularities in the maintenance of books of accounts in ABC Ltd. and the penalty for which they may be liable as per the provisions of the Companies Act, 2013. Dec 2024 2017 Syllabus (3 marks)

Answer-9 According to section 128(6) of the Companies Act, 2013, the following persons are responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc.

i. Managing Director,
ii. Whole-Time Director, in charge of finance
iii. Chief Financial Officer; or iv. Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Penalty

In case the aforementioned persons referred to in Section 128(6) of the Act contravene such provisions, they shall in respect of each offence, be punishable shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees

Question-10 (a) Rocky Images Ltd. has Varun, –Chief Financial Officer (CFO) and Prateek– Managing Director (MD). There is no wholetime director in charge of finance in the company. Varun (CFO) is of the opinion that if there is any allegation by shareholders for financial statements not complying with accounting standards then MD Prateek will be held responsible and punished whereas Prateek (MD) believes that Varun (CFO) would be held, so an argument started between the two. Discuss the above scenario in line with provisions of Companies Act, 2013.

(b)Unlisted Resham Cements Ltd. had achieved a turnover two hundred crore in FY 2017-18 and had to file their balance sheet and statement of profit and loss in XBRL mode. Gradually their turnover started declining due to inadequate demand of cements every year and in FY 2023-24 the company could achieve only rupees forty crore turnover. The accountant of the company is of the view that now XBRL mode of filing is not needed any more as the XBRL limit is not reached and five years have expired. Comment on the view of the accountant under Companies Act, 2013. Dec 2024 2022 Syllabus (3+2=5 marks)

Answer-10 (a) The persons responsible to take all reasonable steps to secure compliance by the company with the requirement of Section 129(7) of the Companies Act 2013, are:

(i) Managing Director;
(ii) Whole-Time Director in charge of finance;
(iii) CFO;
(iv) Other person of a company charged by the Board with the duty of complying with the requirements of section 129.

Where any of the aforementioned officers are absent, all the directors shall be responsible and punishable.

Therefore, as there is no whole-time director in charge of finance in the company all the directors including MD and CFO will be held responsible and punished. Hence, Mr. Varun CFO and Mr. Prateek, MD will be held responsible and punished.

(b) Pursuant to Rule 3 of the Companies (Filing of Documents and Forms in XBRL) Rules, 2015 the following class of companies shall file their financial statements and other documents under section 137 of the Companies Act, 2013 with the Registrar in e-Form AOC-4 XBRL:
(i) companies listed with stock exchanges in India and their Indian subsidiaries;
(ii) companies having paid up capital of five crore rupees or above;
(iii) companies having turnover of one hundred crore rupees or above;
(iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.
The companies which have filed their financial statements under sub-rule (1) of Rule 3 of XBRL Rules, shall continue to file their financial statements and other documents though they may not fall under the class of companies specified therein in succeeding years.
Hence, unlisted company Resham Cements Ltd. has to continue filing financial statements in XBRL mode in current FY 2023-24 also. The view of accountant of the company is not tenable.

Question-11 Soya Products Ltd. has been operating successfully for several years. In the financial year 2020-21, the company reported a significant increase in revenue and profits. However, in 2024-25, a whistleblower within the company revealed that the financial statements for 2020-21 were manipulated by the company's top management to inflate profits and conceal losses. The whistleblower filed a complaint with the Central Government, providing supporting documents. The Central Government conducted an investigation based on the whistleblower's evidence and concluded that the accounts for 2020-21 should be re-opened and the financial statements re- cast. Referring to the provisions of the Companies Act, 2013, examine the feasibility of re-opening the accounts and re-casting the financial statements for the financial year 2020-21. Dec 2024 2022 Syllabus (5 marks)

Answer-11

FACT:

- Soya Products Ltd. reported significantly increased revenue and profits in the financial year 2020-21.
- In the financial year 2024-25, a whistleblower revealed manipulation of the financial statements for 2020-21 by top management to inflate profits and conceal losses.
- The whistleblower filed a complaint with the Central Government along with supporting documents.
- The Central Government investigated and concluded that the accounts for 2020-21 should be re-opened and the financial statements re-cast.

PROVISIONS:
Section 130 of the Companies Act 2013, provides for provisions relating to re-opening of books of account or re-casting of its financial statements of the company. Accordingly,
(i) A company shall not re-open its books of account and shall not recast its financial statements, unless an application to the tribunal or by court of competent jurisdiction, in this regard is made by any one or more of the following
(a) the Central Government, or

(b) the Income-tax authorities, or
(c) the Securities and Exchange Board of India (SEBI), or
(d) any other statutory regulatory body or authority or any person concerned, and
(e) An order in this regard is made by a court of competent jurisdiction or the Tribunal.

(ii) The re- opening and recasting of financial statements is permitted only for the following

reasons –
(a) the relevant earlier accounts were prepared in a fraudulent manner; or
(b) The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

(iii) The Tribunal shall give the notice to
(a) the Central Government,
(b) the Income-tax authorities,
(c) the Securities and Exchange Board,
(d) any other statutory regulatory body or authority concerned or any other person concerned and shall take into consideration the representations, if any, made by Central Government or the authorities, Securities and Exchange Board or the body or authority concerned or any other person concerned before passing any order under this section.
(iv) The accounts so revised or re-cast under this section shall be final. No order shall be made under Section 130 (1) of Companies Act, 2013 in respect of re- opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

Provided that where a direction has been issued by the Central Government under the proviso to sub-section 5 of section 128 of the Companies Act, 2013 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.

CONCLUSION:

- The Central Government is competent to apply to the Tribunal for re-opening and re- casting of financial statements for the year 2020-21.
- Since the accounts were allegedly prepared fraudulently, this satisfies a permitted ground for re-opening.
- The financial year 2020-21 falls within the 8-year period preceding the current financial year 2024-25.
- Therefore, it is feasible and lawful for the Central Government to apply to the Tribunal, which may order re-opening and re-casting of accounts for 2020-21.

Question-12 RK Info Pvt. Ltd. (the company) has the following financial details as of 31st March, 2024, according to its financial statements:
Paid-up share capital: Rs. 60
crore Turnover: Rs. 180 crore
Outstanding deposits : Rs.30
crore
The company is planning to appoint Salim, who is currently serving as the wholetime Company Secretary, as its internal auditor.
You are requested to assess the following :

(i) Is RK Info Pvt. Ltd. mandatorily required to appoint an internal auditor under the provisions of the Companies Act, 2013?
(ii) Can a Company Secretary who is in the whole-time employment with a company be appointed as the internal auditor of the same company according to the applicable provisions of the Companies Act, 2013? Dec 2024 2022 Syllabus (3 marks)

Answer-12

(i) Mandatory appointment of Internal Auditor: As per Section 138 of Companies Act, 2013 read with Rule 13(1)(c) of the Companies (Accounts) Rules, 2014
Every private company having –

(i) Turnover of two hundred crore rupees or more during the preceding financial year; or

(ii) Outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

From the above provision the criteria of paid-up share capital or outstanding deposits is not applicable to private company. RK Info Pvt. Ltd. is a private company having turnover of Rs. 180 crore which is less than the stipulated limit of Rs. 200 crores. Hence, it is not mandatory for RK Info Pvt. Ltd. to appoint an internal auditor.

(ii) Appointment of whole-time company secretary as an internal auditor:
As per section 138 read with explanation to rule 13 of the Companies (Accounts) Rules, 2014 the internal auditor may or may not be an employee of the company. Hence, a company secretary in whole-time employment can be appointed internal auditor of the same company, if so, decided by the Board

Question-13 Case Study :

Background : Lalit, Bisen, Roma, Raunak, and Rasik, a practicing company secretary, have formed a brainstorming group to discuss, deliberate, and resolve various issues they encounter in their daily works related to company law. They decided to meet every Sundary evening to share their views on issues brought before the group. Several meetings have taken place, and the important issues discussed in detail are outlined below:

Books of Account in respect of Branch Office : Roma stated that she has been appointed as the Secretarial Auditor of Janak Textile Limited, which has its registered office in Chennai, India, and a branch office in California, USA. While conducting the secretarial audit for the f inancial year 2023-24, she noticed that one director of the company had requested financial information beyond the financial returns maintained at the registered office concerning the branch office. However, his request was denied by the Board, which contended that a director can only inspect the summarized quarterly returns sent by the branch office to the registered office. She asked the other group members to analyse the situation.

As brought up by Roma, the request of a director for financial information related to a branch office – beyond the summarized quarterly returns maintained at the registered office of Janak Textile Limited – was rejected by the Board. Analyse the situation and determine, whether the Board's decision to deny the requested information to the director is valid. Dec 2024 2022 Syllabus (3 marks)

Answer-13

FACT:

- Janak Textile Limited has its registered office in Chennai, India, and a branch office in California, USA.
- A director requested financial information beyond the summarized quarterly returns maintained at the registered office concerning the branch office.
- The Board denied the director's request, contending that a director can only inspect the summarized quarterly returns sent by the branch office to the registered office.

PROVISIONS:

Books of Account in respect of branch office As per Section 128(2) and (3) of the Companies Act, 2013 read with rule 4(1) of the Companies (Accounts Rules) 2014, proper summarized return of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office

of the company and which shall be kept open to directors for inspection.

As per rule 4 of the Companies (Accounts) Rules, 2014 where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought and the period for which the information is sought. The company shall produce such financial information to the director within 15 days of the date of receipt of the written request. The financial information required by the director shall be sought for by the director himself and not by or through his holder of power of attorney or agent or any representative.

CONCLUSION:

In the light of the above provisions and the rule

- The director has the right to request any other financial information maintained outside India by submitting a proper written request with full details.
- The company is obligated to produce the requested financial information within 15 days.
- Therefore, the Board's decision to deny the director's request is not valid.

Question-14 Stallworth Ltd., a listed company having a paid up share capital of ` 11 crore with a turnover of ` 100 crore had appointed an Audit Committee which recommended M/s ANC & Associates, a firm of Chartered Accountants having such qualifications and experience as is required for appointment as the auditor of the company. The next Annual General Meeting (the AGM) was due on 30.09.2023. The Board disagreed with the said recommendation of the committee and refer back to it for reconsideration. The Audit Committee was adamant on appointing the above firm of the chartered accountants.

Discuss in the light of the Companies Act, 2013:

i. The course of action for Board of Directors to resolve the above deadlock. What would be your answer, if above situation was that of filling the casual vacancy of auditors?
ii. The steps to be taken by the Board of Directors for appointment of auditors in case there was no requirement of Audit Committee in the company? (5 Marks)

Answer-14

According to section 177 of the Companies Act, 2013 read with the Companies (Meetings of Board and its Powers) Rules, 2014, in every listed public company- an Audit Committee shall be constituted by Board of directors.

Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014, provides that in case of a company that is required to constitute an Audit Committee under section 177, the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.

The audit committee shall recommend the name of an individual or a firm as auditor to the Board for consideration; the Board shall consider and recommend an individual or a firm as auditor to the members in the Annual General Meeting (AGM) for appointment.

If the Board disagrees with the recommendation of the Audit Committee- It shall refer

back the recommendation to the committee for reconsideration citing reasons for such disagreement.

ii. In the given question, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the AGM.

Section 139(8) provides that the Board may fill any casual vacancy in the office of an auditor within 30 days.

Section 139(11) prescribes that where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.
Hence, the position will remain same even in case of casual vacancy.

iii. In case there was no requirement of appointment of an audit committee then the BOD shall recommend to the members in the AGM, the name of an individual or a firm which can be appointed as auditor after considering qualifications and experience of such individual or firm and other matter as laid therein.

Question-15
The Income Tax Authority (the statutory body) has gathered some information and is of the view that there has been a manipulation of accounts of FGH Ltd. reflecting an incorrect financial position of the company. The statutory body intends to get the accounts reopened to reflect correct financial position of the company. In light of the Companies Act, 2013 elucidate.
(i) the statutory provisions governing the issue of re-opening of accounts by the Income Tax Authority.
(ii) the voluntary revision of financial statements or board's report by the directors.
(iii) For how many preceding financial years the board of directors may revise the financial statements? (5 Marks)

Answer-15
(i) According to section 130 of the Companies Act, 2013, a company shall not:
a. re-open its books of account and
b. recast its financial statements,
unless an application in this regard is made by:
a. the Central Government,
b. the Income-tax authorities,
c. the Securities and Exchange Board of India (SEBI),
d. any other statutory regulatory body or authority or
e. any person concerned.
& an order is made by a court of competent jurisdiction or tribunal to the effect
a. That the relevant earlier accounts were prepared in a fraudulent manner; or
b. The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.
No order shall be made in respect of re-opening of books of account relating to a period earlier than 8 financial years immediately preceding the current financial year. However, where a direction has been issued by the Central Government under the proviso to section 128(5) for keeping of books of account for a period longer than 8 years, the books of account may be ordered to be re-opened within such longer period.

(ii) According to section 131 of the Companies Act, 2013, if it appears to the directors of a company that:
a. the financial statement of the company does not comply with the provisions of section 129; or
b. the report of the Board does not comply with the provisions of section 134.
They may prepare revised financial statement or board's report in respect of any of the three preceding financial years.
Such revised financial statement or report shall not be prepared or filed more

than once in a financial year.

(iii) The board of directors may revise financial statements in respect of any of the three preceding financial years.

Question-16 Who will sign the audit report in case of a proprietorship concern or the firm of the auditors and how the qualification/s in the audit report will be dealt with by the auditor at the annual general meeting of the company as per the provisions of the Companies Act, 2013? (3 Marks)

Answer- 16 As per section 145 of the Companies Act, 2013, The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of section 141(2) (i.e. in case of firm including LLP is appointed as an auditor of a company, only the partner who are Chartered Accountants shall be authorized to act and sign on behalf of the firm).
The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Question-17
(i) Right Trading Limited is a company engaged in trading of automobile spare parts. During the current financial year 2024-25, Mr. J the CFO retired due to bad health. The company appointed Mr. C as the new CFO. On verification of the financial statements and statutory returns of the company, Mr. C advised the Board of Right Trading Limited to revise the financial statements for the year 2021-22.
Examine, with reference to the applicable provisions of the Companies Act, 2013, whether M/s Right Trading Limited can do so? (3 Marks)

(ii) M/s DEF is conducting the audit of Right Trading Limited for the past 9 years. Now due to the requirement of rotation of auditors, M/s DEF is going to retire at the upcoming Annual General Meeting and in its place M/s XYZ will be appointed as the Auditor of Right Trading Limited. One of the partner Mr. F, who was in charge of the certification of the financial statements of the company retired from the firm of M/s DEF and joined the firm of M/s XYZ.
Examine, considering the provisions of the Companies Act, 2013 about the validity of the appointment of M/s XYZ. (2 Marks)

Answer-17
(i) Voluntary Revision of Financial Statements or Board's Report on the Approval of the Tribunal As per section 131 of the Companies Act, 2013, if it appears to the directors of a company that:
a. the financial statement of the company does not comply with the provisions of section 129; or
b. the report of the Board does not comply with the provisions of section 134
they may prepare revised financial statement or board's report in respect of any of the 3 preceding financial years after obtaining the approval of the Tribunal on an application made by the company within fourteen days of the decision taken by the Board.
A certified copy of the order of the Tribunal shall be filed with the Registrar of Companies within 30 days of the date of receipt of the certified copy.
In the given question, Mr. C has advised the Board of Right Trading Limited to revise

the financial statements for the year 2021-22. The Board of Directors can do so as the said financial statements are pertaining to not later than three preceding financial years (from 2024- 2025) and by obtaining the approval of the Tribunal within fourteen days of the decision taken by the Board.

(ii) As per section 139(2) of the Companies Act, 2013, listed companies and such class of companies as prescribed, shall not appoint or re- appoint an audit firm as auditor for more than two terms of five consecutive years.
Further, on the date of appointment, an audit firm shall not have any partner or partners who are/were also the partner/s to the other audit firm, whose tenure has been expired in a company immediately preceding the financial year.
It means, if a partner (common partner), who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of Chartered Accountants, such other firm shall also be ineligible to be appointed as succeeding auditor of same company after two terms of five consecutive years. i.e. cooling period. [Rule 6(3) of Companies (Audit and Auditors) Rules, 2014]
The audit of Right Trading Limited was conducted by M/s DEF and after expiry of two consecutive terms, it is proposed to appoint M/s XYZ. Mr. F is the common partner in M/s DEF and M/s XYZ, hence, the appointment of M/s XYZ is not valid.
Assumption: In this question, nothing is specified about the nature of the company. Hence, drawing a positive assumption that Right Trading Limited is a company on which the provisions related to rotation of auditors [as specified under section 139(2)], are applicable

Question-18 Sanjana joined a company named as Designers Cloths Ltd. as an Independent Director. In order to know more about the company, she wanted to inspect the books of account and minutes books of the Board Meetings held during the previous three years.
The company is keeping the books of account and other records at its Registered Office, which is at Mumbai whereas Sanjana resides in Kolkata. Therefore, through power of attorney, Sanjana authorised her friend Avantika, who is a Chartered Accountant and does practice in Mumbai, to make an inspection of the books of accounts and minutes books of the meetings of the Board.
Giving the relevant provisions of the Companies Act, 2013 and its Rules made thereunder, examine, whether Avantika can make inspection on behalf of Sanjana. (5 Marks)

Answer-18 In terms of section 128(3) of the Companies Act, 2013 the books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as prescribed in Rule 4 of the Companies (Accounts) Rules, 2014.
The financial information shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.
As per the facts of the question, the books of accounts and other records including minutes books are maintained at the registered office of Designer's Cloths Ltd. in Mumbai i.e. within India. Sanjana as the director of the company can inspect the books of accounts and minutes books. But she cannot authorize Avantika to make an inspection on behalf of her.

Question-19 Sohan Lal was appointed as the statutory auditor of RST Ltd., a non-government company at the Annual General Meeting held on 30th September, 2023. He has resigned after two months as he wanted to discontinue the practice and surrendered his Certificate of Practice and joined a multinational company.

Explain how the new auditor will be appointed by RST Ltd. and the conditions to be complied with in this regard.

Answer-19 Filling Up Casual Vacancy [Section 139(8)]

Any vacancy arising in the office of the auditor due to any reason except on the expiry of his term is known as a casual vacancy.

As per section 139(8) of the Companies Act, 2013 (the Act), the Board of Directors (other than a Government Company) has power to fill casual vacancy in the office of the auditor within 30 days. In case of casual vacancy due to the resignation of the auditor, such appointment shall be approved by the company by passing an ordinary resolution at a General Meeting convened within three months of the recommendation of the Board.

Any auditor so appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Appointment of auditors to fill casual vacancy shall be made after taking into account the recommendation of the Audit Committee, (if any). [Section 139(11)].
Written and signed consent and certificate shall be obtained from the auditor stating the appointment shall be in accordance with the conditions as may be prescribed under Rule 4 of the Companies (Audit and Auditors) Rules, 2014 and satisfies the criteria provided in Section 141 of the Act. The Company shall inform the auditor concerned of his or its appointment.

Compliances:
As per section 140(2) and (3) of the Act read with Rule 8 of Companies (Audit and Auditors) Rules, 2015, the resigning auditor shall file
Form ADT-3 with the company and the Registrar of Companies (ROC) along with valid reasons within 30 days of the date of resignation.

The company shall file a notice of appointment in Form ADT-1 with the ROC within fifteen days of the meeting in which the auditor is so appointed.
The new auditor appointed under Rule 3 shall submit a certificate that:

i. the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under sections 139, 141, and other applicable provisions of the Companies Act, 2013, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
ii. A written consent to act as the auditor.
iii. the proposed appointment is within the limits laid down by or under the authority of the Act;
iv. The list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
v. The new auditor must communicate with the resigning auditor to ensure there are no professional or ethical concerns.

Thus, the Statutory Auditor can be appointed as per the procedure mentioned above.

UNIQUE ACADEMY FOR COMMERCE

Chapter 10: Compromise, arrangement and amalgamation

Question-1 ABC Ltd. and PQR Ltd. both are registered under the Companies Act, 2013. ABC Ltd. is a wholly owned subsidiary of PQR Ltd. ABC Ltd. and PQR Ltd. both are engaged in the business of manufacturing of steel. The Board of Directors of both the companies unanimously decided to merge ABC Ltd., into PQR Ltd. to get the benefit of market synergy as both are engaged in the same business area and will increase its market size. BOD of PQR Ltd., dispensed with the meeting of equity shareholders, secured and unsecured creditors as the rights of the equity shareholders of the company are not being affected. The Company Secretary of the company objected that in the case of corporate re-organisation meeting of the equity shareholders, and the secured and unsecured creditors cannot be dispensed with. Examine the validity of objection of the Company Secretary with reference to the provisions of the Companies Act, 2013. Dec 2023 2017 Syllabus (5 marks)

Answer-1

FACTS:

- ABC Ltd. (wholly owned subsidiary) and PQR Ltd. (holding company) both manufacture steel.
- The Boards of Directors of both companies decided to merge ABC Ltd. into PQR Ltd. to gain market synergy and increase market size.
- The Board of PQR Ltd. decided to dispense with the meetings of equity shareholders, secured creditors, and unsecured creditors, as they believed the rights of equity shareholders would not be affected.
- The Company Secretary objected, stating that meetings cannot be dispensed with in a corporate re-organisation.

PROVISIONS & CASE LAW:

In the matter of Mohit Agro Commodities & Ors, the NCLAT has observed that section 232(1) of the Companies Act, 2013 uses the word 'may' which introduces an element of discretion to the Tribunal to be exercised in the interest of justice in appropriate situations. Section 232 is a specific provision carved out by the Legislature when both conditions maintained in clauses (a) and (b) of the sub section (l) of section 232 are met.

In the given case the merger sought for is between a wholly owned subsidiary and the holding company. The points which need to be noted is:

- Whether such amalgamation/merger alters the rights of the stakeholders of the company?
- Whether such an amalgamation/merger has any bearing internally on Creditors/ Members of both the companies?
- Whether not holding the subject meeting would amount to violation of any of the provisions of the Companies Act, 2013
- Whether the Tribunal can exercise their discretion when the "Transferor Company" is wholly owned subsidiary of the "Transferee Company" and financial position of the Transferee Company is positive and the merger is not affecting the rights of the Shareholders or Creditors?

Therefore, it is held that the rights and liabilities of Secured and Unsecured Creditors

were not getting affected in any manner by way of the proposed scheme as no new shares are being issued by the ‘Transferor Company’ and no compromise is offered to any Secured and Unsecured Creditors of the ‘Transferee Company’. Hence, when the ‘Transferor and Transferee Company’

involve a Parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors can be dispensed with as the rights of the Equity Shareholders of the 'Transferee Company' are not being affected.

CONCLUSION:
With reference to above case law and provisions, the Tribunal may in the interest of justice direct dispensing with the meeting of Equity shareholders, Secured and Unsecured Creditors as the rights of the Equity Shareholders of the company are not being affected, Hence, it is clear that the objection of the Company Secretary is not correct.

BOD of PQR Ltd., may dispense with the meeting of Equity shareholders, Secured and Unsecured Creditors as the rights of the Equity Shareholders of the "Transferee Company" are not being affected.

Question-2 The period of 10 years is over from taking over X Ltd. (the transferor company) by Y Ltd. (the transferee company) by acquiring its shares and hence, a Board resolution has been passed by the transferee company in the meeting held in June, 2023 to destroy the books and papers (the record) of the transferor company considering the provisions relating to preservation of books of account of the company for 8 years. Referring to the provisions of the Companies Act, 2013, Decide the validity of the decision of the Board of the transferee company. Dec 2023 2022 Syllabus (5 marks)

Answer-2

FACTS:
- Y Ltd. (the transferee company) acquired the shares of X Ltd. (the transferor company) over 10 years ago.
- The Board of Y Ltd. passed a resolution in June 2023 to destroy the books and papers of X Ltd.
- The decision was based on the general provision for preservation of books of account for 8 years.

PROVISIONS:
As per Section 239 of the Companies Act, 2013, the books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter (Chapter XV Compromises, Arrangements and Amalgamations) shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or' the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

CONCLUSION:
- The decision of the Board of Y Ltd. to destroy the books and papers of X Ltd. without prior permission of the Central Government is not valid.
- Y Ltd. must obtain prior approval from the Central Government before disposing of the records of X Ltd., following the procedure under Section

- Therefore, the Board's resolution passed in June 2023 to destroy the records is invalid under the Companies Act, 2013.

Question-3 P Limited (the company) is a wholly owned subsidiary of Q Limited. The company P

Limited wants to make an application for the merger Holding and Subsidiary companies under Section 232 read with Section 230 of the Companies Act, 2013. The Company Secretary of Q Limited is of the opinion that the company cannot apply for merger as per Section 232 of the Act and it shall be mandatory for the company to apply for merger as per Section 233 of the Act i.e., Fast Track Merger. Is the contention of the Company Secretary tenable as per the Act? June 2024 2022 Syllabus (3 marks)

Answer-3

FACTS:

- P Limited is a wholly owned subsidiary of Q Limited.
- P Limited proposes to file an application for merger with its holding company Q Limited under Section 232 read with Section 230 of the Companies Act, 2013.
- The Company Secretary of Q Limited opines that merger must be done under Section 233 (Fast Track Merger) and that Section 232 cannot be invoked in this case.

PROVISIONS:

As per section 233(1) of the Companies Act 2013, notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered between:

- 2 or more small companies or
- a holding company and its wholly owned subsidiary company or
- Such other class or classes of companies as prescribed.

i. two or more start-up companies; or
ii. one or more start-up company with one or more small company.

The provisions given for fast track merger in section 233 of the Act are optional in nature and not a compulsion on the company. Section 233(14) states that a company covered under Section 233 may use the provisions of section 232 for the approval of any scheme for merger or amalgamation. Therefore, with respect to schemes of arrangement or compromise falling within the purview of section 233 of the Companies Act, 2013, the concerned companies may, at their discretion, opt to undertake such schemes under sections 230 to 232 of the Act.

CONCLUSION:

- The opinion of the Company Secretary of Q Limited that the company cannot file under Section 232 and must file under Section 233 is not valid under the law.
- Even though P Limited and Q Limited are eligible for a fast track merger under Section 233, they can choose to proceed under Section 232 read with Section 230.
- Therefore, P Limited is well within its rights to file the merger application under Section 232, and the contention of the Company Secretary is not tenable in law.

Question-4

Case Study

website copywriting and business blog writing. Riding the wave of sourcing work from India by western countries, his business grew quite rapidly.

having taken the business to the highest level his focus shifted from writing content himself to have a team to write content. He personally monitored them to ensure quality. In the year 2016, he formed a media company namely (MTR) Ltd. in Delhi and had a team of fifty persons who were working with him on regular basis.

With the initiative of Manoranjan being very ambitious and positive about his business MTR Ltd. expanded the business by entering into the business of printing books, journals, exporting printed material to the foreign clients etc. After few years the Board decided for demerging its both business where MTR Limited (MTR or ''Demerged Company'') shall remain engaged in media business and a new company i.e., ATR Limited (ATR or ''Resulting Company'') which was formed will engage in the printing business.

The Board of Directors of MTR & ATR approved the scheme of arrangement in their respective meetings. Accordingly, the complete printing business, as a going concern of the demerged entity, was required to be transferred including its assets and liabilities which belong to the printing business of the demerged company to the resulting company. However, the immovable properties were excluded from the deal.

A meeting of members of MTR Limited was convened under the order of the Hon'ble NCLT to consider a scheme of compromise and arrangement. Notice of the meeting was sent in the prescribed manner to all the 1200 members holding in the aggregate 1,00,00,000 shares. The meeting was attended by 900 members holding 60,00,000 shares. 420 members holding 44,00,000 shares voted in favor of thc scheme. 360 members holding 12,00,000 shares voted against the scheme. The remaining members abstained from voting.

A group of creditors of MTR Limited was against the ongoing scheme of arrangement and they made a complaint to the concerned Registrar of Companies (the Registrar) alleging that the management of the company has indulged in destruction and falsification of the accounting records of the company and proposed scheme is not in the interest of the unsecured creditors.

The registered office of ATR Ltd. is presently situated in the premises of MTR Ltd. However, in order to have a separate registered office for corporate business ATR Ltd. hired the premises in the same city where its registered office will be shifted after complying with the legal formalities.

XYZ Limited, an associate company of MTR Limited, has a paid-up capital of ₹ 460 lakhs and accumulated free reserves of ₹ 740 lakhs. Loss for the year ending 31st march, 2023 is ₹ 74 lakhs.

Dividend was declared at the following rates during the three years immediately preceding to the year 2022-23 :

Year 1	10%
Year 2	12%
Year 3	14%

Based on the above information and referring to the provisions of the Companies Act, 2013 answer the following :

Examine, whether the scheme of compromise and arrangement is approved by the requisite majority of members. June 2024 2022 Syllabus (3 marks)

Answer-4 Section 230(6) of the Companies Act, 2013 states that the scheme shall be approved when at a meeting held in pursuance of section 230(1), majority of persons representing three- fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement scheme. In this case out of 1200 members, 900 members attended the meeting, but only 780 members voted at the meeting. As 420 members voted in favor of the scheme, the requirement relating to majority in number (i.e. 390) is satisfied. 780 members who participated in the meeting held 56,00,000 shares, three-fourth of which works out to 42,00,000 shares while 420 members (more than 390 i.e. 50% of 780) who voted for the scheme held 44,00,000 shares (more than 42,00,000 shares). As both the requirements are fulfilled, the scheme is approved by the requisite majority.

Question-5 The issued and paid-up share capital of DEF Limited (the company) is ` 20 crores consisting of 20,00,000 equity shares of ` 100 each. 'The said company has 2000 members. A petition was submitted before the Tribunal signed by 320 members holding 40,000 equity shares of the company for the purpose of relief against oppression and mismanagement by majority shareholders. Examining the provisions of the Company Act, 2013, decide, whether the said petition is maintainable or not. Also, explain the impact on the maintainability of the above petition, if subsequently 160 members, who had signed the petition, withdrew their consent. June 2024 2022 Syllabus (5 marks)

Answer-5

FACTS:

- DEF Limited has a paid-up share capital of ₹20 crores, consisting of 20,00,000 equity shares of ₹100 each.
- The company has 2,000 members.
- A petition under Section 241 for relief against oppression and mismanagement was filed by 320 members, holding 40,000 equity shares (₹40,00,000 of share capital).
- Subsequently, 160 members withdrew their consent for the petition.

PROVISIONS:

- As per provisions of Section 244 of the Companies Act, 2013, in the case a company having share capital, following members are eligible to apply for relief against oppression and mismanagement under Section 241 namely:
  a) not less than100 members of the Company or not less than 1/10th of the total number of its members whichever is less; or
  b) any member or Members holding not less than 1/10th of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.
- The share holding pattern of DEF Limited is given as follows:
  The issued and paid-up share capital of DEF Limited is Rs. 20,00,00,000 (Rupees Twenty Crore) consisting of 20,00,000 equity shares of Rs.100 each.
- The petition alleging oppression and mismanagement has been made by some members as follows:
  a. No. of members making the petition - 320
  b. Amount of share capital held by members making the petition - Rs. 40,00,000 (40,000 shares * Rs. 100)

- Application of thresholds to DEF Ltd.:
  - 200 members (being 1/10th of 2000); or
  - Members holding Rs. 2,00,00,000 share capital (being 1/10th of Rs. 20,00,00,000)

CONCLUSION:

- The petition by 320 members is valid and maintainable, as it satisfies the requirement of at least 100 members under Section 244(1)(a) of the Companies Act, 2013, regardless of the percentage of shareholding.
- The subsequent withdrawal of consent by 160 members does not invalidate the petition, as eligibility is assessed at the time of filing, not during the pendency of the proceedings.
- Therefore, the contention of maintainability stands, and the Tribunal can proceed to examine the merits of the case.

Question-6 MNO Ltd. is a listed company. A group of minority shareholders alleges that the company's Board of Directors has engaged in fraudulent transactions, misappropriated company funds, and manipulated financial statements to inflate the company's share price. The alleged actions have resulted in significant losses to the shareholders.
A group of 50 shareholders, representing 3% of the total issued share capital, has decided to file a class action suit against the company and its directors under Section 245 of the Companies Act, 2013, seeking damages and other reliefs. Based on the

given facts explain, what is a class action suit. Additionally, assess the admissibility of the class action suit before the Tribunal under the provisions of the Companies Act, 2013. Dec 2024 2017 Syllabus (5 marks)

Answer-6

PROVISIONS:

A class action suit is a lawsuit where a group of people representing a common interest may approach the Tribunal to sue or be sued. It is a procedural instrument that enables one or more plaintiffs to file and prosecute litigation on behalf of a larger group or class having common rights and grievances. The requisite number of members provided in sub-section (1) of Section 245, shall be as under:

A. In case, application by Members:

(a) In the case of a company having a share capital

i. not less than one hundred members of the company, or

ii. not less than such percentage of the total number of its members as may be prescribed,

Whichever is less; or

iii. any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

B. In the case of a company not having a share capital

(i) not less than one-fifth of the total number of its members.

As per Rule 84 of the National Company Law Tribunal Rules, 2016, in case of a company having a share capital, the requisite prescribed number of member or members to file an application shall be:

(a) At least 5 % of total number of members of the company or

(b) 100 members of the company, whichever is less, or

(ii) (a) member or members holding not less than 5% of the issued share capital of the company in case of an unlisted company, or

(b) member or members holding not less than 2% of the issued share capital of the company in case of a listed company.

CONCLUSION:

MNO Ltd. is a listed company. A class suit action is moved by such number of shareholders holding 3% of issued share capital which is more than the required shareholding of 2%. Hence, the class suit action is admissible

Question-7 Alpha Ltd., a parent company, owns 100% of the equity shares of Beta Ltd., its wholly owned subsidiary. The companies have proposed a scheme of merger/amalgamation under Section 232 of the Companies Act, 2013, whereby Beta Ltd. will be merged into Alpha Ltd.

Both companies have submitted an application before the National Company Law Tribunal (NCLT), seeking approval of the scheme without convening meetings of their equity shareholders, secured creditors, and unsecured creditors.

Discuss, whether the National Company Law Tribunal (NCLT) has the jurisdiction to dispense with the requirement of conducting such meetings for the purpose of sanctioning the scheme of amalgamation. Additionally, identify and elaborate on the key factors the Tribunal will consider before issuing an appropriate order. Justify your answer with reference to the provisions of the Companies Act, 2013. Dec 2024 2022 Syllabus (5 marks)

Answer-7

FACTS:

- Alpha Ltd. is the 100% holding company of Beta Ltd., making Beta Ltd. its wholly owned subsidiary.

- A scheme of merger has been proposed under Section 232 of the Companies Act, 2013, whereby Beta Ltd. (transferor company) will be merged into Alpha Ltd. (transferee company).
- Both companies have jointly filed an application before the National Company Law Tribunal (NCLT) seeking sanction of the scheme without convening meetings of:
    - Equity shareholders,
    - Secured creditors, and
    - Unsecured creditors.

The question is whether the NCLT has jurisdiction to allow such a dispensation of meetings, and what factors it must consider in doing so.

PROVISIONS:

Section 232(1) of the Companies Act 2013, states that when an application is made to the Tribunal under section 230 of the Companies Act, 2013 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal − (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and
(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis.

Case Law: In the matter of Mohit Agro Commodities & Ors. NCLAT, dated June 28, 2021 When the “Transferor and Transferee Company” involve a Parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders, Secured and Unsecured Creditors can be dispensed with as the rights of the Equity Shareholders of the “Transferee Company” are not being affected.

CONCLUSION:

- Yes, the NCLT has jurisdiction to dispense with the requirement of convening meetings of shareholders and creditors under Section 232, especially in a merger involving a parent company and its wholly owned subsidiary.
- Before granting such dispensation, the Tribunal will consider:
    - Whether any rights of shareholders or creditors are affected,
    - Whether the scheme is fair and reasonable,
    - Whether any provision of the Act is violated, and
    - Whether the nature of the merger justifies such a dispensation.
- In this case, since Alpha Ltd. holds 100% of Beta Ltd., there are no minority shareholders in Beta Ltd. whose interests may be prejudiced.
- If it is shown that the creditors’ rights are not adversely affected, and the scheme is in compliance with law, NCLT may rightly allow the scheme to proceed without convening any meetings.

UNIQUE ACADEMY FOR COMMERCE

Chapter 11: Dormant companies

Question-1 Sanjay Diagnostic Limited (the Company) was registered in Bihar under the provisions of the Companies Act, 2013. Its future project is to diversify into other profitable business, which is unique and provide sustainable business growth. Due to the recession in the industry and excessive competition from the seasoned player, the Company has no significant accounting transaction and business activities during the last two financial years. However, the Company has been regular in filing its financial statements and annual returns with the Registrar of Companies, Patna by making payment of applicable filing fees. The Company decided to file the application for obtaining the status of dormant company in line with the relevant provision of the Companies Act, 2013. The Company instead of passing a special resolution to this effect in the general meeting of the Company issued notice to all the shareholders of the Company for this purpose and obtained consent of 82% of shareholders in value. Referring the provisions of the Companies Act, 2013 and Rules made there under answer the following:

(i) Explain the term ‘‘Dormant Company’’.

(ii) Whether the payment of applicable filing fees to the Registrar of Companies (ROC) could be considered as significant accounting transaction under the Companies Act, 2013.

(iii) Whether the application made by Sanjay Diagnostic Limited is in order, in the absence of passing a special resolution? Dec 2023 2022 Syllabus (5 marks)

Answer-1 (i) As per Section 455 (1) of the Companies Act, 2013, where a company formed and registered under the Companies Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company. According to Explanation (i) to Section 455 of the Companies Act, 2013, “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

(ii) Explanation (ii) to Section 455 of the Companies Act, 2013 states, “significant accounting transaction” means any transaction other than:---

- payment of fees by a Company to the Registrar;
- payments made by it to fulfil the requirements of this Act or any other law;
- allotment of shares to fulfil the requirements of this Act; and
- payments for maintenance of its office and records.

Therefore, according to the Explanation (ii) to Section 455 of the Companies Act, 2013, payment of applicable filing fees by a Company to the Registrar of Companies cannot be considered as significant accounting transaction.

(iii) According to Rule 3 of the Companies (Miscellaneous) Rules, 2014, a Company may make an application in prescribed form MSC-1 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 of the Companies Act, 2013 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value).

Thus, application made by Sanjay Diagnostic Limited is in order, as a notice is issued to all the shareholders of the Company for this purpose and it has obtained consent of 82% of shareholders in value which fulfills the requirement of at least 3/4th shareholders (in value).

Question-2
Case Study
:
Background : Lalit, Bisen, Roma, Raunak, and Rasik, a practicing company secretary, have formed a brainstorming group to discuss, deliberate, and resolve various issues they encounter in their daily works related to company law. They decided to meet every Sundary evening to share their views on issues brought before the group. Several meetings have taken place, and the important issues discussed in detail are outlined below :
Dormant status of the company by ROC : Raunak brought up the issue of a dormant company for discussion. He said that his client MM Consultancy Ltd. (the company) received a notice from the Registrar of Companies (the ROC/Registrar) for entering its name in the register maintained for dormant companies. Upon reviewing the company's records, he found that it had not filed its financial statements for two consecutive financial years and an annual return for the preceding financial year i.e. for only one year. He requested the group to discuss and deliberate on this situation, particularly in light of the Managing Director's concern about the validity of the Registrar's notice, and sought clarification on the provisions governing the status of a dormant company at the Registrar's behest. Dec 2024 2022 Syllabus (3 marks)

Answer-2

FACTS:

- MM Consultancy Ltd. received a notice from the Registrar of Companies (ROC) for being marked as a dormant company.
- Upon review, it was found that the company had:
  - Not filed its financial statements for two consecutive financial years.
  - Not filed its annual return for the preceding one financial year.
- The company's Managing Director questioned the validity of the notice issued by the ROC.
- Raunak, a member of the brainstorming group, raised the matter for group discussion.

PROVISIONS:
Dormant status of the company by ROC As per Section 455(4) of the Companies Act, 2013, in case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar of Companies (ROC) shall issue a notice to the company and enter the name of such company in the register maintained for dormant companies.

The section provides that the failure in filing either the financial statements or the annual returns for two consecutive financial years shall give a cause of action to the Registrar of Companies for issuing a notice and entering the name of the company in the register of dormant companies.

CONCLUSION:

- In this case, MM Consultancy Ltd. has failed to file financial statements for two consecutive financial years, fulfilling one of the conditions under Section 455(4).
- Although the company defaulted in filing the annual return for only one year, that does not negate the non-compliance related to financial statements.
- Therefore, the Registrar's notice is valid, and the company can be lawfully

entered into the register of dormant companies.

Chapter 12: Inspection, inquiry and investigation

Question-1 The recognised trade union of Water Purifier Ltd. made an application before the Tribunal seeking order for investigation of the company on the ground that the company has defaulted the payment of dues of the workmen since long and the business of the company is being conducted otherwise for a fraudulent or unlawful purpose. In response, the company objected to the application and claimed that the recognised trade union not being the members or creditors of the company has no locus standi to make such application and is liable for dismissal. Examine the admissibility of the application of recognised trade union submitted before the Tribunal seeking investigation of the company. Dec 2023 2022 Syllabus (3 marks)

Answer-1

FACTS:

- The recognised trade union of Water Purifier Ltd. submitted an application to the Tribunal seeking an investigation into the company's affairs.
- Grounds stated:
  - Non-payment of workmen's dues for a long period.
  - The company is conducting its business fraudulently or unlawfully.
- The company objected, arguing that the trade union lacks locus standi as it is not a member or creditor of the company.

PROVISIONS:

As per section 213 of the Companies Act, 2013, the Tribunal may order after giving a reasonable opportunity of being heard to the parties concerned that affairs of a company ought to be investigated. The Tribunal may also make such order on an application made to it by any other person or otherwise, if it is satisfied that the circumstances suggest that the business of the company is being conducted with intent to defraud its creditors, members, or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose. Hence, the Companies Act allows any other person to make an application before the Tribunal if the circumstances so suggest.

CONCLUSION:

- Since Section 213 permits "any other person" to apply to the Tribunal under relevant circumstances, the recognised trade union has locus standi to file the application.
- The company's objection is not tenable in law.
- Therefore, the application of the trade union is admissible, and the Tribunal can consider issuing an appropriate order for investigation.

Question-2 Mr. Ranjan is an employee of the company Moon Limited and investigation is going on him under the provisions of the Companies Act, 2013. The company wants to terminate the employee on the ground of the investigation going against him. They have filed the application to tribunal for approval of termination. The Company has not received any reply from the tribunal within 30 days of filing an application. The Company consider it as a deemed approval and terminated Mr. Ranjan.

(i) Is the contention of company being valid in law?

(ii) What is remedy available to Mr. Ranjan?

(iii) What is remedy available to Mr. Ranjan, if reply of Tribunal has been received within 30 days of application? Dec 2023 2022 Syllabus (5 marks)

Answer-2 Section 218 of the Companies Act, 2013 states that the company shall require to take approval of the Tribunal before taking action against the employee, if there is any pendency of any proceedings against any person concerned in the conduct and management of the affairs of the company.
The company shall require approval in the following circumstances:-

- discharge or suspension of an employee; or
- punishment to an employee by dismissal, removal, reduction in rank or otherwise; or
- change in the terms of employment to the disadvantage of employee;
- The Tribunal shall notify its objection to the action proposed in writing.

In case, the company, other body corporate or person concerned does not receive the approval of the Tribunal within 30 days of making the application, it may proceed to take the action proposed against the employee.
In case the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of 30 days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in such manner and on payment of prescribed fees.
The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.
In view of the above provision of the Companies Act, 2013:

i. Yes, the termination of Mr. Ranjan made by Moon Limited (the company) is valid in law and the company can do so as no approval from the Tribunal has been received within 30 days of making the application.
ii. In this scenario, Mr. Ranjan has no remedy available. As per the provision of the law appeal to the Appellate Tribunal can be made only if the person is dissatisfied with the objection raised by the Tribunal. In this case the Tribunal has not replied, hence Mr. Ranjan cannot prefer an appeal to the Appellate Tribunal.
iii. In this case, Mr. Ranjan can prefer an appeal to the Appellate Tribunal within 30 days of receiving letter of objection raised by the Tribunal and with payment of prescribed fee.

Question-3 Provide various grounds on which the investigation is assigned to Serious Fraud Investigation Office (SFIO)? Dec 2023 2022 Syllabus (5 marks)

Answer-3 As per section 212 of the Companies Act, 2013, the Central Government may assign the investigation into affairs of a company to the Serious Frauds Investigation Office (SFIO) on the basis of an opinion formed from the following:
•The Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support. The Central Government on receipt of such report can order an investigation under Serious Frauds Investigation Office;

- On intimation of a special resolution passed by a company that its affairs ought to be investigated;

•In the public interest;
•On request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such

investigation.

Question-4 A group of creditors of MTR Limited, not satisfied with the scheme being approved in a fraudulent manner, made a complaint to the Registrar of Companies (the Registrar) and the Registrar, immediately on receiving the complaint, attempted during the business hours at 11 a.m.

on 25th September, 2023 to enter the premises of the company for seizure of the record but the company opposed to it on the contention that the Registrar has no power to enter the premises and seize the record without the order of the special court. Decide, whether the contention of the company is valid. June 2024 2022 Syllabus (3 marks)

Answer-4

FACTS:

- A group of creditors of MTR Limited was dissatisfied with a fraudulent scheme approval.
- The creditors lodged a complaint with the Registrar of Companies (RoC).
- On 25th September 2023 at 11 a.m., the Registrar attempted to enter the company premises to seize records.
- The company opposed the action, claiming that the Registrar lacked power to do so without a special court order.

PROVISIONS:

Section 209 (1) of the Companies Act, 2013 states that, if the Registrar has reasonable ground to believe that the books and papers of

- a company or
- relating to the key managerial personnel or
- any director or
- auditor or
- company secretary in practice if the company has not appointed a company secretary

are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court for the seizure of such books and papers,
a) enter with such assistance as may be required and search the place or places where such books or papers are kept; and
b) seize such books and papers as he considers necessary after allowing the company to take copies of or extracts there from, such books or papers at its cost.

CONCLUSION:

According to the above provisions,

- In the present case, the **Registrar attempted seizure without obtaining prior permission** from the **Special Court**.
- As per **Section 209(1)**, such seizure **without court authorization is not valid**.
- Therefore, the **contention of MTR Limited is valid in law**, and the Registrar's action is **unauthorized**.

Question-5 Investigation proceeding under the provisions of the Companies Act, 2013 is being carried out against XYZ Limited (the company). During the investigation, the Tribunal has a reasonable ground to believe that a removal, transfer or disposal of funds, assets or properties of the company is likely to take place in a manner that would be prejudicial to the interest of the company. In this connection, the Tribunal requested the company's legal advisers and the bankers respectively to disclose and furnish a copy of the relevant communication made by them to the company. But they refused to share any document or disclose any information relating to their clients under investigation. Under the circumstances, the Tribunal wishes to pass an

order to :

(i) Freeze the assets of the company.

(ii) Punish the company for the contravention, if any, of the order of the Tribunal.

(iii) Compel the legal advisers and the bankers to provide the required information.

In the light of the provisions of the Companies Act, 2013 analyses, whether the Tribunal has the power to do so in respect of the above situations. June 2024 2022 Syllabus (2+1+2=5 marks)

Answer-5

Powers of tribunal as to freezing of assets of Company and imposing

i. As per Section 221 of the Companies Act, 2013, where it appears to tribunal (NCLT) on reasonable ground to believe that removal or transfer or disposal of funds, assets or properties of company is likely to take place in manner prejudicial to interests of company or its shareholders or creditors or in public interest, tribunal may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding 3 years as may be specified in the order or may take place subject to such conditions and restrictions as the tribunal may deem fit. Hence, the tribunal may pass an order to freeze the assets of the company.

ii. In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal as specified above, the company shall be punishable with fine which shall not be less than Rs.1 lakh but which may extend to Rs. 25 lakhs. Hence, the tribunal may punish the company for the contravention of the order of the tribunal.

iii. In term of Section 227 of the Companies Act, 2013 even during an investigation, the legal adviser cannot be compelled to provide the information of any privileged communication made to him in that capacity, except as respects the name and address of his client, or by the bankers of any company, body corporate, or other person of any information as to the affairs of any of their customers, other than such company, body corporate, or person, to the Tribunal or to the Central Government or to the Registrar or to an inspector appointed by the Central Government. Hence, the legal advisers and bankers of XYZ limited cannot be compelled to provide privileged communication.

Question-6 The Companies Act, 2013 provides certain protections to employees during the investigation of a company's affairs and grants a remedy of appeal against actions taken by the management. Explain. Dec 2024 2022 Syllabus (5 marks)

Answer-6

No Action against employees without Tribunal's approval

Section 218 of Companies Act, 2013 provides protection to employees during investigation. During the course of any investigation and during pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company, such company, other body corporate or person shall not discharge or suspend or punish any employee without approval of the Tribunal. This protection is available to employees during the investigation of the affairs or other matters of or relating to a company, other body corporate or person or of the membership, ownership of shares or debentures.

Following actions are not permitted without approval of the Tribunal –

(a) To discharge or suspend any employee;

(b) To punish any employee, whether by dismissal, removal, reduction in rank or otherwise; or

(c) To change the terms of employment to his disadvantage.

Action against Employees – As per Section 218(2) of Companies Act 2013

If the applicant does not receive within thirty days of making of application, the approval of the Tribunal, only then applicant concerned may proceed to take against the employee the action proposed.

Appeal against Tribunal to Appellate Tribunal − as per the Section 218(3) and (4) of Companies Act 2013 If the applicant is dissatisfied with the objection raised by the tribunal it may within a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal. The decision of the Appellate Tribunal on such appeal shall be final and binding on the Parties concerned. Over-riding effect Section 218(5)
For the removal of doubts, it is hereby declared that the provisions of this section shall have without prejudice to the provisions of any other law for the time being in force

Question-7 The debenture trustee of DC Limited has observed that the company's management is suspected of siphoning off funds, leading to financial losses for the debenture holders. Is the situation a valid reason for the debenture trustee to make an application to the Tribunal for an investigation into the affairs of the company? Is the debenture trustee competent to make such an application to the Tribunal? If so, who is the competent authority to appoint the inspectors to conduct the investigation? Explain with reference to the provisions of the Companies Act, 2013. Dec 2024 2022 Syllabus (3 marks)

Answer-7 Investigation into the company's affairs on application made by members or other persons As per section 213 of the Companies Act, 2013, the Tribunal may make such order on an application made to it by the members of requisite numbers or voting power or any other person or otherwise, if it is satisfied that the circumstance suggest, including inter alia, that −
(i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

It was held in the case of Comfort Intech Ltd vs. Ravi Kumar Distilleries Ltd (2019) 108 NCLT Chennai that the Lead Managers for IPO is entitled to file an application before the Tribunal alleging that the directors of the company are involved in diverting IPO proceeds of company to their associates under provisions of Section 213 of the Companies Act 2013.
In this case scenario it is seen that the business of the company is being conducted with intent to defraud its creditors, members, or any other person (i.e. debenture holders) or otherwise for a fraudulent or unlawful purpose. This is a good/valid reason for making such an application.
An application can be made by any person other than the members. Hence, Debenture-trustee can make an application for necessary order of the Tribunal.

If the Tribunal issues the order that the affairs of the company ought to be investigated, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company and to report thereon.

Hence, by applying the above provisions debenture trustee of DC Limited can make application to National Company Law Tribunal and Central Government shall appoint competent person to conduct investigation.

PART B:- COMPANY ADMINISTRATION AND MEETINGS

Chapter 13: General Meetings

Question-1 (i) What do you mean by proxy? Explain the circumstances where a proxy or representative is counted for quorum.
(ii) Can a director appoint a person as proxy to attend a Board Meeting on his behalf? Dec 2023 2017 Syllabus (5 marks)

Answer-1 Meaning of proxy: Under Section 105(1) of the Companies Act, 2013, any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. However, a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.
As per rule 19 of the Companies (Management and Administration) Rules, 2014, a person can act as proxy on behalf of members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying voting rights: A member holding more than ten percent, of the total share capital of the Company carrying voting rights may appoint a single person as proxy and such person shall not act as proxy for any other person or shareholder.

Circumstances where a proxy / representative is counted for quorum:

1) Para 3.2 of SS-2 stipulates that a duly authorized representative of President of India or the Governor of the State shall be deemed to be a member personally present and enjoys all the rights of a member present and enjoys all the rights of a Member present in person. Such a representative is counted for quorum in a General Meeting.
2) According to proviso to Section 97(1) of the Act, where default is made in holding the Annual General Meeting of a company as per Section 96 of the Act, the National Company Law Tribunal (NCLT) may order that one-member present in person or by proxy will constitute quorum.
3) Again, according to proviso to Section 98(1) of the Act, where it is impracticable to call a General Meeting as per the Act or the Articles, NCLT may order that one-member present in person or by proxy will constitute quorum.

(ii) The concept of proxy is alien to meetings of the Board. A director has only two options —
1. to attend the meeting of the Board of Directors either in person or by video conference; or
2. to absent himself from the Board Meeting with or without the permission of the Chairman. A director cannot appoint a proxy to attend the meeting of the Board on his behalf.

Question-2 Diamond Ltd. issued a notice for holding its annual general meeting on 5th September, 2023. The notice was sent to all members on 14th August, 2023 through e-mail which was received by them on the same day. Suneeta, who is a member of the company, holding 10% of share capital, alleged that the company has defaulted the provisions of the Companies Act, 2013 with regard to the length of notice and such meeting was not validly called. Referring to the provisions of the Companies Act, 2013,

examine, whether the length of notice convening the annual general meeting is valid? What will be your answer, if Diamond Ltd. is a section 8 company (i. e., a company not for profit)? Dec 2023 2017 Syllabus (5 marks)

Answer-2

PROVISION:

As per section 101 of the Company Act, 2013 read with para 1.2.6 of the Secretarial Standard-2 a general meeting of a company may be called by giving not less than 21 clear days' notice either in

writing or through electronic mode. Notice through electronic mode shall be given in such manner as may be prescribed. Where notice of meeting is sent by post, it shall be deemed to be served at the expiration of 48 hours after, the letter containing the same is posted. Each of 21 days must be a full and complete days.
The expression "21 clear days" means that the day of service of notice and date of the meeting are to be excluded while calculating the period of 21 days. [N.V.R. Naggappa Chettair Vs. Madras Race Club (1949) 19 Comp cas. 175 (Mad)]

With reference to above provisions the conclusion of the given case is as under

1. Date of holding the AGM is 05th September, 2023 and date of dispatch of notice through email is 14th August, 2023. So, 05th September 2023 and 14th August 2023 are to be excluded while calculating period of notice. Since, the notice has not been sent by post there is no need to add further 2 days as a transit period. The length of notice is, therefore, of 21 days which meet the requirement of law and hence, valid.
2. If Company is section 8 company, in such case number of days' notice required as per section 101 of the Companies Act, 2013 is 14 days. Thus, in this case also the length of notice is valid.

Question-3 The Annual General Meeting (AGM) of Trimetal Bearings Limited, a listed company, was called on 31st August, 2023 after issuing due notice. 120 members were personally present at the AGM. After the chairman declared the presence of quorum, a section of the members disrupted the proceedings demanding bonus shares and higher dividend. After waiting the half an hour, as the members continued to disrupt the proceedings, the chairman adjourned the AGM to 15th September, 2023. Referring to the provisions of the Companies Act, 2013, state, whether the chairman of Annual General Meeting can adjourn the meeting suo motu? Dec 2023 2017 Syllabus (4 marks)

Answer-3

FACTS:

- Company: Trimetal Bearings Limited (a listed company).
- AGM Date: 31st August, 2023.
- Presence: 120 members were personally present, and quorum was declared.
- Disruption: A section of members disrupted the proceedings demanding bonus shares and higher dividends.
- Action Taken: After waiting for 30 minutes and seeing continued disruption, the Chairman adjourned the AGM to 15th September, 2023.

PROVISIONS:
Para 15.1 of SS-2 provides that a duly convened general meeting shall not be adjourned unless the circumstances so warrant. The chairman may, at his discretion, adjourn the general meeting in the event of disorder or other like causes when it becomes impossible to conduct the general meeting and complete its business.

Demand for more dividend and issue of frequent bonus shares is a common occurrence in the AGMs of many companies. However, the members hardly ever disrupt the proceedings of the General Meeting.

CONCLUSION:

- In this case, the meeting could not proceed due to continued disruption by members, despite waiting for 30 minutes.

- Therefore, the Chairman's decision to adjourn the AGM suo motu was valid, justified, and in accordance with SS-2.
- Hence, the adjournment is in order.

Question-4 The COVID-19 pandemic has shifted India towards the digital businesses and the MCA and SEBI has allowed the companies to conduct their Board meetings as well as general meetings to hold virtually. As a Company Secretary answer the following questions of Board of Directors of Digital Ltd. (Listed Company) which is planning to conduct their Board meeting and General meeting through Video-Conferencing.

(a) How to accommodate the shareholders who wants to ask questions in view of the large attendance of shareholders throughout the length and breadth of the country.
(b) Why the proxy provisions are dispensed with in case of General meetings held through video- conferencing?
(c) Is it required to mention venue of the meeting in the notice? If so, what would be the venue of the meeting, for meeting held through video conferencing? Dec 2023 2017 Syllabus (4 marks)

Answer-4 The Ministry of Corporate Affairs (MCA) and Securities and Exchange Board of India (SEBI) has allowed the companies to conduct their Board meetings as well as hold general meetings virtually. As a Company secretary the following are the answers of the questions asked by the Board of the Digital Ltd., which are planning to conduct their Board meeting and General meeting through video conferencing −

a. In the notice of the AGM, it may be mentioned that if any member wants to speak, they may get their names registered with the company and it will be at the discretion of the chairman to allow the speakers to speak depending upon the availability of time.

(As per Para 5.2 of SS-2, the Chairman shall provide a fair opportunity to Members who are entitled to vote to seek clarifications and/or offer comments related to any item of business and address the same, as warranted.)

b. As per Annexure XX of SS-2 Procedure to conduct General Meetings through VC or OAVM, it is stipulated that in case of Video Conferencing meeting there is no question of proxy attendance. A shareholder can himself attend the general meeting from wherever he is located. Same applies to the case with e-voting. In case of e-voting also there is no proxy to vote on behalf of the shareholder.

c. Yes, place of meeting shall be provided in the Notice. In case of virtual meetings deemed venue is to be given.

Question-5 State those circumstances, under which a ''postal ballot form'' can be considered invalid according to the provisions of Secretarial Standard-II.

Answer-5 As per para of 16.5.3 of Secretarial Standard-II, a postal ballot form shall be considered invalid if: a) A form other than one issued by the company has been used;
b) It has not been signed by or on behalf of the member;
c) Signature on the postal ballot form doesn't match the specimen signature with the

company;

d) It is not possible to determine without any doubt the assent or dissent of the member;
e) Neither assent nor dissent is mentioned; f) Any competent authority has given directions in writing to the company to freeze the voting rights of the member;
g) The envelope containing the postal ballot form is received after the last date prescribed;
h) The postal ballot form, signed in a representative capacity, is not accompanied by a certified copy

of the relevant specified authority;
i) It is received from a member who is in arrears of payment of calls;
j) It is defaced or mutilated in such a way that its identity as genuine form cannot be established;
k) Member has made any amendment to the Resolution or imposed any condition while exercising his vote.

Question-6 Facts of the Case: ABC Limited was incorporated on 14th October 2020 with the objective of manufacturing of Cement. The plant was commissioned in April 2021, at a cost of Rs. 580 Crores at Somnath, Gujarat. The Company was promoted by Chahal group. It is important to note that at present, ABC Limited is not a listed Company.
Over a period of time, ABC Limited has grown to become one of India's largest manufacturers and exporters of cement and having 800 members. The Quorum fixed by the Articles of ABC Limited was 7 members present.
In line with its long-term vision, the company has diversified into Home Textiles, Cotton Yarn, Industrial/Edible Salt and Lignite Mining.
The current composition of the Board of Directors of ABC Limited is as follows:
•Total number of directors: 10
•Independent Directors: 5 (including one woman director)
• Whole-Time Directors: 3 (including Managing Director, Executive Director Finance, and Executive Director - Operations)
•Non-Executive Promoter Directors : 2 (1 Chairman and 1 Vice Chairman).
The Board approved Notice to call lst Annual General Meeting on 24th December 2021 at 2.30 P.M. (IST) to approve several resolutions including adoption of audited financial statements of the Company for the financial year ended March 31, 2021; approval regarding appointment of directors etc. Record Date/Cut-off date for said AGM was fixed on 17th December 2021.
Notice of the AGM contains Notes related to Proxy, which is reproduced as under:
A MEMBER ENTITLED TO ATTEND AND VOTE AT THE MEETING IS ENTITLED TO APPOINT A PROXY TO ATTEND AND VOTE INSTEAD OF HIMSELF. A PROXY NEED NOT BE A MEMBER. PROXIES IN ORDER TO BE EFFECTIVE MUST BE DEPOSITED AT THE REGISTERED OFFICE OF THE COMPANY NOT LESS THAN FORTY EIGHT HOURS BEFORE THE COMMENCEMENT OF THE MEETING. A PROXY FORM IS ENCLOSED WITH THIS NOTICE.
Based on the above facts of the case study answer the following questions :

a) ABC Limited issued a notice on 1st December, 2021 to hold its 1st Annual General Meeting (AGM) on 24th December, 2021. Check the validity of the notice referring to the provisions of the relevant act and secretarial standards in case it is sent by post. (5 marks)
b) Based on the above integrated case and after considering following details of the persons present in the general meeting of ABC Limited, check whether the quorum of the Annual General Meeting is validly constituted or not.
    i. Mr. A, the representative of Governor of Gujarat.
    ii. Mr. B & Mr. C are preference shareholders.
    iii. Mr. D representing PQR Ltd. And XYZ Ltd.
    iv. Mr. E, Mr. F, Mr. G and Mr. H are proxies of shareholders • (5 marks)
c) Mr. S, a shareholder of ABC Limited, issued two Proxies in respect of the shares held by him in favour of Mr. 'X' and Mr. 'Y'. The proxy in favour of 'X' was lodged on 22nd December 2021 at 10.00 A.M. and the one in favour of Mr. Y was lodged on 23rd December 2021 at 3.30 P.M. The company rejected both the proxies in favour of Mr. X as well as Mr. Y. Based on the integrated case and

after considering above mentioned details regarding proxies, is the rejection by the company in order? Your answer should be based on the applicable provisions of the Companies Act, 2013 and Secretarial Standards. You are also requested to write the provisions related to inspection of proxies. (5 marks)

d) (d) At a General meeting of the company, a matter was to be passed by a special resolution. Out of 400 members present, 200 members voted in favour of the resolution, 50 members voted against it and 50 members' votes were found invalid. The remaining 100 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act. 2013, examine the validity of the Chairman's declaration? (5 marks) Dec 2023 2022 Syllabus

Answer-6

a) As per section 101(1) of the Companies Act, 2013, a general meeting may be called by giving not less than 21 clear days' notice in writing or through electronic mode in such manner as may be prescribed. As provided in para 1.2.6 of secretarial standard-2 (SS-2), for the purpose of reckoning 21 days clear notice, the day of sending the notice and the day of Meeting shall not be counted. Further, in case the company sends the notice by post or courier, additional two days shall be provided for the service of notice.
Date of holding AGM: 24th December
2021; Date of dispatch of notice: 1st
December 2021; Days to be excluded:
(a) Day of holding AGM i.e., 24th December 2021.
(b) Day of dispatch of notice i.e., 1st December 2021.
(c) 2 additional days for service of notice i.e., 2nd & 3rd December 2021 (SS-2 Para 1.2.6) Number of days' notice given: 20 days (i.e., from 4th December 2021 to 23rd December 2021), which is short by 1 day.
Number of days' notice required under section 101 of the Act is 21 clear days. Therefore, it is not a case of valid notice.

b) i. Since Mr. A is the representative of the Governor of Maharashtra, shall be treated as a member personally presents (Section 112).
ii. Preference shareholders can vote only in relation to such matters which directly affect their rights. (Section 47) In this case, meeting was called to take decision on approval of financial statements and appointment of Directors, which does not affect their rights. Therefore, Mr. B & Mr. C cannot be counted for the purposes of quorum, though they may be personally present. Since Mr. D represents two body corporates, he would be treated as two members personally present. (Section 113)
iii. Since Mr. E, Mr. F, Mr. G and Mr. H are proxies of shareholders and members are not personally present. They are not considered while counting quorum. (Section 105)
As per the section 103 (1) of the Companies Act, 2013, unless the articles of the company provide for a larger number,—
(a) in case of a public company,—
(i) five members personally present if the number of members as on the date of meeting is not more than one thousand;
(ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;
(iii) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.
From the above analysis, it can be concluded that only 3 members are personally present and the Quorum fixed by the Articles of ABC Ltd was 7 members present, so they do not constitute proper quorum.

c) Section 105 of the Companies Act, 2013 provides that a member, who is entitled

to attend and to vote, can appoint another person as a proxy to attend and vote at the meeting on his behalf. As per Section 105 of the Companies Act, 2013 and Para 6.6.1 of SS-2, a proxy should be deposited 48 hours before the time of the meeting.

The SS-2 (Secretarial standard-2) also states that where allowed, a member can appoint

one or more proxies, to attend and vote instead of himself and a proxy need not be a member. If a Company receives multiple Proxies for the same holdings of a Member, the Proxy which is dated last shall be considered valid.
In the given case, the proxies should have, therefore, been deposited on or before 22nd December 2021 latest by 2.30 P.M. (the date of the meeting being 24th December 2021, at 2.30 P.M.). Proxy in favour of Mr. Y was deposited on 23rd December 2021 at 3.30
P.M. Therefore, proxy in favour of Mr. Y has become invalid, being less than 48 hours before the time of the meeting.
Thus, rejecting the proxy in favour of Mr. X is unsustainable; because proxy in favour of Mr. X is valid since it was deposited in time (i.e. on 22nd December 2021 at 10.00 A.M.).

Inspection of proxy:
As per section 105(8) of the Companies Act, 2013, every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, is entitled to inspect the proxies lodged with the company, if at least 3 days' notice in writing is given to the company. Such notice shall be received at least three days before the commencement of the Meeting.
As per para 6.8.2 of the SS-2, proxies shall be made available for inspection during the period beginning twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting. Every Member entitled to vote on any Resolution at a General Meeting is entitled to inspect the proxies lodged with the company. The inspection should be allowed during the period starting twenty four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting. Inspection shall be allowed between 9 a.m. and 6 p.m. during such period.

d) Section 114 of the Companies Act, 2013 deals with Ordinary and Special Resolution.
As per Section 114(2) of the Companies Act, 2013, a resolution shall be a special resolution when: (a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
(b) the notice required under this Act has been duly given; and
(c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.
The method of voting might be through show of hands, electronic voting, poll or any other permitted method or postal ballot. The number of votes of only the members who are entitled and voting are to be counted. Hence, the persons who abstain from voting or are not allowed to vote (whether under the provisions of this Act or otherwise) are not to be counted. Further, the notice required to be given may be given either by the company or the member proposing the resolution.
In the given case, 200 members voted in favour of the resolution, and 50 members voted against it. Invalid votes and person abstained from voting shall not be counted.
So, total valid votes :
250 Votes in favour :

200 Votes against :
50
Voting percentage in favour = 80% (i.e. 200/250*100), which is more than 75% and validly passed. Hence, declaration by the Chairman of the meeting is valid.

Question-7 Priya Garments Limited (the company) having its registered office at Hyderabad (India) has received, in accordance with the provisions of section 115 of the Act, a special notice from Revati, a member holding 50,000 equity shares aggregating to 5% of shareholding of the

Company's voting capital for removal of Srinivasan, a director of the company being indulged in the fraudulent activities detrimental to the interest of the company. Accepting the requisition, the Board of directors, passed a resolution at its meeting held on 30th November, 2023 to convene an extra-ordinary general meeting of the company on Saturday, the 30th December, 2023 at l0
a.m. at the registered office of the company at Hyderabad for removal of Srinivasan on requisition of the member. You being a Company Secretary of the company is requested to prepare a draft notice of extra-ordinary general meeting to be issued on lst December, 2023 along with explanatory note for removal of Srinivasan on requisition of the member as required under the Companies Act, 2013. Dec 2023 2022 Syllabus(5 marks)

Answer-7 Notice of Extra Ordinary General Meeting NOTICE is hereby given that the Extra- Ordinary General Meeting of the members of Priya Garments Limited ("the Company") will be held on the requisition of Ms. Revati who holds in aggregate as on the date hereof 50,000 equity shares aggregating to 5% of shareholding of the Company's voting capital, on Saturday, the 30th December, 2023 at 10 a.m. at the registered office of the Company at___, Hyderabad to transact the following business:

SPECIAL BUSINESS:

1. To consider and if thought fit, to pass, with or without modification(s), following resolution as Ordinary Resolution:
   "RESOLVED THAT pursuant to Section 115 read with Section 169 of the Companies Act, 2013 and rules made thereunder, Mr. Srinivasan (DIN:) be and is hereby removed from his office as director of the company with immediate effect."
   RESOLVED FURTHER THAT, any Director of the Company and / or the Company Secretary, be and are hereby severally authorized to issue notice of extra-ordinary general meeting, file Form DIR- 12 with the Registrar of Companies and to do all such acts/deeds/things/ as may be deemed fit to give effect to this resolution."
   By order of the Board of
   directors For Priya Garments
   Limited
   Sd/-
   Company Secretary
   Place: Hyderabad
   Date: ……

NOTES:

1. A member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of himself. The proxy need not be a member of the company.
2. Corporate members are requested to send a duly certified copy of the Board Resolution / Power of Attorney authorizing its representative to attend and vote on their behalf at an Extra- Ordinary General Meeting.
3. The proxies to be effective should be deposited at the registered office of the company not later than 48 hours before the commencement of the meeting.
4. The relevant Explanatory Statement in terms of Section 102 of the Companies Act, 2013 is enclosed herewith.

Explanatory Statement pursuant to Section 102 of the Companies Act, 2013

A special notice as per Section 115 of the Companies Act, 2013, has been received

by the company from Ms. Revati, who holds in aggregate 50,000 Equity Shares aggregating 45 EP– CL&P–December 2023 to 5% of shareholding of the Company's voting capital for removal of Mr. Srinivasan (DIN:__) from Directorship of the company with immediate effect on the ground that he has indulged in fraudulent activities detrimental to the interest of the company.

None of the Directors / Key Managerial Personnel of the Company or their relatives is, in any way

concerned or interested, financially or otherwise, in the resolution set out as Item Number 1 of the Notice except as a director.
The Board recommends the Ordinary Resolution set out as Item Number 1 of the Notice for approval by the Shareholders.

Question-8 You are the General Manager (Secretarial) of Susrut Industries Ltd. With respect to ensuing annual general meeting to be held by video conferencing. The Executive Director wants to know from you the following:

(i) Can the company mention in the notice that it holds the right to restrict the number of speaker shareholders depending on time availability?

(ii) As the company has neither maintained registers in electronic form nor has scanned the same, how can it keep registers open for inspection at the meeting held by video conferencing? Advise. June 2024 2017 Syllabus (5 marks)

Answer-8 (i) Yes, Companies can restrict the speakers depending on the availability of time. The notice calling for meeting should require the speaker shareholders to register themselves in advance and depending on the time availability, it shall be at the discretion of the Chairman to allow the speakers. In addition, the companies may allow recordings to be sent in advance with the permission of the Chairman and shareholders in order to avoid scenarios where a speaker shareholder may get disconnected or have an audio/visual connection issue thus saving time and effectively maintaining the decorum of the meeting.

(ii) In case the registers are not maintained in an electronic form, the physical registers/ documents should be scanned for uploading in a virtual data room established for the purpose. Login ID and password can be provided for inspection and it is to be ensured that only view rights are given for inspection and the registers/documents cannot be deleted, copied or downloaded or the register/documents may be made available for inspection on a virtual platform (e.g., Zoom, Microsoft teams, etc.), and displayed in a presentation form. The registers/documents which shall be made available for inspection in connection with the AGM, shall be made available from the time notice is given till the conclusion of the meeting.
Therefore, the physical registers should be scanned to keep them open for inspection at the meeting to be held by video conferencing.

Question-9 Alpha Numeric Control Systems is a listed public company with Registered Office at Mumbai. The company has 5500 shareholders, examine the validity in the following :
(a) To conduct the next Annual General Meeting (AGM) of the company at Kolkata where the majority of directors reside. The Board of Directors (BOD) have already passed a resolution to conduct the AGM at Kolkata.
(b) Due to non-finalization of annual accounts, the AGM was adjourned for two months. The Company Secretary wants to post the Notice calling for the adjourned AGM 3 days before the adjourned AGM on the company website. June 2024 2017 Syllabus (4 marks)

Answer-9 (a) According to Section 96 read with Secretarial Standard-2(SS-2), the Annual General Meeting (AGM) of the listed company needs to be conducted at the village/town/city where the Registered Office of the company is located. However, the

Central Government may exempt any company from the provisions of section 96(2) subject to such conditions as it may impose. Unless the company has obtained exemption from the Central Government, the action of the company of holding the AGM in Kolkata is not valid.

(b) As per Para 15.2 of SS-2, if a general meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned meeting shall be given at least 21 clear days before the

adjourned meeting to comply with provisions of Section 101 of the Companies Act, 2013 relating to Notice. Since, the AGM has been adjourned for more than 2 months, three days' Notice and posting of Notice on the website of the company is not valid. The company needs to send Notice of the adjourned meeting at least 21 clear days before the meeting by permitted mode of communication like, electronic means.

Question-10 In the light of provisions of relevant Secretarial Standard state if the minute book can be in the custody of a senior officer of the company where there is no Company Secretary in the company. June 2024 2017 Syllabus (2 marks)

Answer-10 As per para 8.3 of Secretarial Standard − 2 on General Meetings minutes book shall be kept in the custody of any director duly authorised for the purpose by Board where there is no Company Secretary in the company.
Therefore, the minute book can be kept in the custody of any authorized director and not in the custody of the senior officer.

Question-11 Draft a Specimen of the minutes of Extra-Ordinary Meeting where Ankush was appointed as an independent director. June 2024 2017 Syllabus (5 marks)

Answer-11
MINUTES OF THE PROCEEDINGS OF THE EXTRA ORDINARY GENERAL MEETING OF (Name of the Company) HELD ON ..... (day).....(date) 20 .....FROM ..... TO.....A.M./P.M AT.....(address).
The following were present:

1. Mr. A (in the Chair)
2. Mr. B (Director and Member)
3. Mr. C (Director)
4. Mr. F (Company Secretary)
5. (Members present in person) (state number}
6. .....(Members present by Proxy) {state number}

Mr. G, Partner of M/s,.....Chartered Accountants, Auditors of the Company,
CHAIRMAN
In accordance with Article.....of the Articles of Association, Mr. A, Chairman of the Board of Directors took the Chair. Introduction The Chairman welcomed the Members and introduced the Directors seated on the Dias. The Chairman stated that Mr. and Mr.....Directors, could not attend the Meeting due to..... (explain the reason for absence).
Quorum
The Chairman stated that the requisite Quorum was present and called the meeting to order. Notice
With the consent of the Members present, the Notice convening the Extra-Ordinary General Meeting of the Company was taken as read. The business of the Meeting, as per the Notice thereof, was thereafter taken up item-wise. Appointment of Independent Director Proposed by : Mr. ..... Seconded by : Mr .....The Chairman explained the profile of
Mr. Ankush to the members. He explained that in order to broadbase the board, it was proposed to appoint Mr. Ankush , a legal expert as an Independent Director. The fo1lowing Resolution having been proposed and seconded respectively by the

aforementioned Members was put to vote as an Ordinary Resolution:

“RESOLVED THAT pursuant to the provisions of Sections 149, 150(2), 152 and any other applicable provisions of the Companies Act, 2013 and any other rules made there under read with Schedule IV to the Companies Act. 2013, approval of the Company be and is hereby

accorded for appointment of Mr. Ankush (DIN No……), as an Independent Director of the Company to hold the office for a period of 3 years i.e. up to ..... AND THAT by virtue of sub-section (13) of Section 149 of the Companies Act, 2013 he shall not be liable to retire by rotation."
The Chairman enquired from the Members present if there were any clarifications required on the same. Since none of the Members required any clarification, the Ordinary Resolution was put to vote and on a show of hands , declared carried by the requisite majority.
CLOSE OF THE MEETING
There being no other business to transact the Meeting closed with a vote of thanks to the Chair. Date:.....
Place:.....

CHAIRMAN

Question-12 Explain the compliance requirement for holding of annual general meeting (the AGM) of the company including the listed company and One Person Company as per the provisions of the Companies Act, 2013 and applicable Regulation of SEBI (Listing Obligations and Disclosure requirements) Regulations, 2015. June 2024 2022 Syllabus (5 marks)

Answer-12 Holding of Annual General Meeting (Section 96 of the Companies Act, 2013)
1. Annual general meeting should be held once in each calendar year.
2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
3. Subsequent annual general meeting of the company should be held within 6 months from the date of closing of the relevant financial year.
4. The gap between two annual general meetings shall not exceed 15 months.
5. Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.
6. Annual General Meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Additional Compliance for listed Companies: - Additionally, for listed entities, Regulation 44(5) and 44(6) of SEBI (LODR) Regulations, 2015 provides that the top 100 listed entities by market capitalization. determined as on March 31st of every financial year shall hold their annual general meeting within a period of five months from the date of closing of the financial year. The top 100 listed entities shall provide one-way live webcast of the proceedings of the annual general meetings. Explanation: The 100 entities shall be determined on the basis of market Capitalization, as at the end of the immediate previous financial year.

Exemption to OPC: As provided in sub-section (1) of section 96, one person company is not required to hold Annual General meeting As per 1.1 of SS-2 provides that the Board shall, every year, convene or authorize convening of meeting of its members called the Annual General Meeting to transact items of ordinary business specifically required to be transacted at an annual general meeting as well as special business, if any. If the Board fails to convene its Annual General Meeting in any year, any member of the company may approach the prescribed authority which may then direct the

calling of the Annual General Meeting of the company.

Question-13 A managing director of Askot Sugar Mills Limited, a listed company with 6000 members, wants to convene the next annual general meeting (AGM) through video conferencing.

Apprise him on the following issues in this respect with reference to the provisions of the Companies Act, 2013:

(i) Whether venue should be mentioned in the Notice?
(ii) How to keep the statutory registers, now kept in hard copies, open for inspection by members at the virtual AGM?
(iii) Do the shareholders have a right to demand recording of proceedings of the virtual AGM?
(iv) Can a member, unable to attend the AGM in person, appoint a proxy to attend and vote at the virtual AGM? Dec 2024 2017 Syllabus (4 marks)

Answer-13 (i) Yes, place of the meeting shall be provided in the Notice. In case of virtual meetings deemed venue is to be given.
(ii) If the statutory registers are not kept in electronic form as soft copies, then the physical registers and documents need to be scanned and uploaded in the virtual data room for access by the members.
(iii) Recording of the General Meetings held through VC or OAVM is not mandatory as per law and only the recorded transcript has to be maintained. Therefore, a shareholder/director cannot ask for the recording of meeting conducted through VC or OAVM. Even if the company records the meeting it's only for their internal purpose.
(iv) In case of VC meetings there is no question of proxy attendance. A shareholder can himself attend the meeting from wherever he is located. Same applies to the case with e-voting. In case of e-voting also there is no proxy to vote on behalf of the shareholder. The concept of proxy is relevant only in case of a physical meeting.

Question-14 Kidszone Private Limited running the garments business, manufacturing readymade clothes for kids was incorporated on 8th August, 2018 consisting of 20 members and 4 directors namely–Anju, Ankith, Bindu, and Bhuvan. The company is running a successful business with 200 employees. Company's paid-up share capital is rs. 10 lakhs and turnover Rs. 2 crores as per the latest audited financial statements. Due to operational challenges the Company fails to hold an annual general meeting (AGM) for two consecutive years. Two members of the Company approached the NCLT seeking necessary relief. Assess the validity of the application and advise the Board of the legal consequences for not conducting the AGM with reference to the provisions of the Companies Act, 2013. Dec 2024 2017 Syllabus (4 marks)

Answer-14

FACTS:

- Company: Kidszone Private Limited (engaged in manufacturing readymade clothes for kids).
- Incorporation Date: 8th August, 2018.
- Structure:
  - Members: 20
  - Directors: 4 (Anju, Ankith, Bindu, Bhuvan)
  - Employees: 200
- Financials (as per latest audited statements):
  - Paid-up share capital: ₹10 lakhs
  - Turnover: ₹2 crores
- Default: The company failed to hold Annual General Meetings (AGMs) for two consecutive years.
- Action Taken: Two members have approached the National Company Law

Tribunal (NCLT) seeking relief.

PROVISIONS:
Section 97 of the Companies Act, 2013, provides that if any default is made in holding the annual general meeting of a company, any member of the company may make an application to the Tribunal to call or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient. Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

Section 99 of the Companies Act, 2013, provides that if any default is made in complying or holding a meeting of the company, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in case of continuing default, with a further fine which may extend to five thousand rupees for each day during which such default continues.

CONCLUSION:
In light of the above provisions,

- The application made by two members to the NCLT is valid under Section 97.
- The Board of Directors is liable for penal consequences under Section 99 for default in holding AGMs.
- The company should take immediate corrective steps to comply and avoid further penalties.

Question-15 Referring to the provisions of Companies Act, 2013, explain the mode of sending the notice of the general meeting including the notice of Extraordinary General Meeting (EGM) called by the requisitionists themselves on failure of the Board to call a requisitioned EGM. Can the company issue such notice by ordinary post? Dec 2024 2017 Syllabus (4 marks)

Answer-15 According to Para 1.2.2 of Secretarial Standards on General Meetings (Secretarial Standard-2), Notice of the General Meeting can be sent, inter alia, by ordinary post also.

According to Para 1.2.2 supra, Notice of the General Meeting shall be sent to members by registered post or speed post or courier or e-mail and NOT by ordinary post in the following cases
a) If the company provides the facility of e-voting u/s 108
b) If the item of business is being transacted through postal ballot u/s 110

In terms of Rule 17(8) of the Companies (Management and Administration Rules), 2014, Notice of the Extraordinary General Meeting (EGM) shall be sent to the members by registered post or speed post or e-mail if the meeting is called by the requisitionists themselves where the Board of Directors (BOD) has not proceeded to call the EGM within the stipulated period of three months from the date of requisition.

As per Section 118(10) of the Act, every company shall observe Secretarial Standards with respect to General Meetings as specified by ICSI and as approved by the Central Government. Hence, the above provisions are mandatory for every company as per Secretarial Standard-2.

Question-16 Some members of a company with share capital intend to request the

Board of Directors to convene an Extraordinary General Meeting (EGM) to transact the business of buying back shares. If the Board fails to convene the EGM, the members plan to call the meeting themselves. You are requested to explain the provisions of the Companies Act, 2013, regarding the calling and holding of an EGM by the Board upon requisition by members, and the timeline

for calling an EGM by the requisitionists, if the Board fails to do so. Additionally, examine the feasibility of conducting such an EGM for the buy-back of shares and outline the consequences, if the quorum is not present at a meeting called by the members. Dec 2024 2022 Syllabus (5 marks)

Answer-16

(a) Calling and holding of an extra-ordinary general meeting (EGM) by the Board on requisition of members [Section 100(2) of the Companies Act, 2013]

The Board shall call an extraordinary general meeting on receipt of the requisition from the number of members who hold, on the date of the receipt of the requisition, not less than one tenth of such of the paid-up share capital of the company as on that date carries the right of voting.

Matters set out for consideration in requisition:

The requisition made as above, shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company. [Section 100(3) of the Companies Act 2013]

Time period for calling the meeting:

The Board is required to proceed to call a meeting within 21 days from the date of receipt of a valid requisition, which should be held within 45 days of such deposit of the requisition with the company.

(b) Timeline for convening the EGM by the requisitionists [Section 100(4) of the Companies Act 2013]

(1) If the Board does not within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitonists themselves. However, in such case, the meeting should be held within a period of 3 months from the date of the requisition.

(c) Feasibility of such a meeting for the proposed business:

Section 100(4) provides that such requisition shall not pertain to any item of business that is required to be transacted mandatorily through postal ballot. As per Rule 22 of the Companies (Management and Administration) Rules, 2014 that the items of business of buy-back of shares by the company shall be transacted through postal ballot. Hence, convening an EGM on requisition by the members for buy-back of shares shall not be feasible.

(d) Consequence,

if quorum is not present at such a meeting: In case, the quorum is not present within half-an-hour from the time appointed for holding a meeting called by requisitionists, the meeting shall stand cancelled. [Section 103(2)(b) of the Companies Act, 2013)] It may be noted that convening an EGM on requisition by the members for buy-back of shares shall be feasible, if e-voting is mandatory for the company as per Section 108 and Section 110(1).

Question-17 Draft a specimen notice for the Annual General Meeting (AGM) in accordance with the provisions of the Companies Act, 2013, ensuring that there is no special business to be transacted. Dec 2024 2022 Syllabus (5 marks)

Answer-17

Specimen Notice of Annual General Meeting

Name of the Company .....

Registered Address .....

CIN..... Email..... Telephone..... Website.....

NOTICE OF ... . (Meeting Number) ANNUAL GENERAL MEETING

NOTICE is hereby given that the ... (Meeting Number) Annual General Meeting of the Members of ... (Name of the Company) will be held on ..... (day), the .....(date), 20..... at.....a.m/p.m at.....(address) to transact the following business:

Ordinary Business:

1. To receive, consider and adopt the standalone and consolidated Financial Statements of the Company for the financial year ended 31st March, ... and the Reports of the Board of Directors and the Auditors.
2. To declare dividend for the financial year ended 31st March, ...
3. To appoint a director in place of Mr..... (DIN.....), who retires by rotation and being eligible, offers himself for reappointment.
4. To appoint Statutory Auditors and to determine their remuneration. For this purpose, to consider and if deemed fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution:

   "RESOLVED THAT pursuant to the provisions of Section 139 and other applicable provisions if any, of the Companies Act, 2013 and the Rules framed thereunder, as amended from time to time, M/s. ... ..., Chartered Accountants, (Firm Registration No.....) be and are hereby appointed as Auditors of the Company to hold office from the conclusion of this Annual General Meeting till the conclusion of the ..... Annual General Meeting of the Company, and the Board of Directors be and are hereby authorised to fix their remuneration."

   "RESOLVED FURTHER THAT the Board of Directors of the Company (including a Committee thereof), be and is hereby authorised to do all such acts, deeds, matters and things as may be considered necessary, desirable or expedient to give effect to this Resolution."

Order of the Board of Directors

For.....

..... (Signature)

Place: ..... (Name)

Date ..... 20..... Company Secretary

Notes:

1. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company.
2. Proxies, in order to be effective, must be received in the enclosed Proxy Form at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.
3. The Register of Members and the Share Transfer Books of the Company will remain closed from.....to..... (both days inclusive).
4. Electronic copy of the Annual Report is being sent to all the Members whose email IDs are registered with the Company/Depository Participant(s) for communication purposes unless any Member has requested for a hard copy of the same. For Members who have not registered their email address, physical copy of the Annual Report is being sent in the permitted mode. In case you wish to get a physical copy of the Annual Report, you may send your request to (email) mentioning your folio/DP ID and Client ID. Annual Reports is also available in the Financials section on the website of the Company at .....
5. Voting through electronic means

   In compliance with provisions of Section 108 of the Companies Act, 2013 and Rule 20 of the Companies (Management and Administration) Rules, 2014, the Company is pleased to provide members the facility of exercising their right to vote electronically on the items mentioned in this Notice. The Company has appointed Mr. ..... as scrutinizer for conducting the e-voting process in a fair and transparent manner.

   The voting period begins on ....., 202.... at 10:01 hrs. and will end on 202.... at 17:00 hrs. During this period shareholders of the Company, holding shares either in physical form or in dematerialised form, as on the cut-off date of.....202.....may cast their vote electronically. The e-voting module shall be disabled for voting thereafter.

The Company has signed an agreement with ..... (agency) for facilitating e-voting to enable the Shareholders to cast their vote electronically. The instructions for shareholders voting electronically are given at page no. ..... of the Annual Report.

6. The Results shall be declared on or after the Annual General Meeting of the Company and shall be deemed to be passed on the date of Annual General Meeting. The results along with the Scrutinizer's Report shall be placed on the website of the Company ..... within 2 days of passing of the resolutions at the Annual General Meeting of the Company and shall be communicated to ..... (Stock Exchange).

Question-18 Q L Ltd. is a public limited company incorporated in Surat, Gujarat with 1200 members. On 10.12.2023 a general meeting was convened in which 14 members were present in person. Mr. Mohan was acting as an authorized representative of two body corporates who are members of Q L Ltd. Shyam one of the important members was absent. The Chairman Mr. Rahi adjourned the meeting, taking plea of absence of Mr. Shyam, to same day and place next week. The members present at the meeting venue waiting to attend, opposed the decision submitting that the majority of them present now shall be unavailable next week. Referring to the provisions of Companies Act, 2013 elaborate:

i. Whether the requisite quorum to hold meeting as required in case of public limited companies is present in this case?
ii. Whether Mr. Rahi could adjourn the meeting in the current scenario? (5 marks)

Answer-18

According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.

As per Secretarial Standard– 2, one person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one Member present in person for the purpose of Quorum.

Here, the term 'members personally present' refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

i. Q Ltd. is a public company, having 1200 members hence, the quorum shall be 15 members personally present.
Mr. Mohan shall be treated as 2 members as he is the authorized representative of two body corporates.
Hence, total 15 members were present at the meeting held on 10.12.2023. Thus, the requisite quorum was present.

Assumption: It is assumed that these 14 persons are inclusive of Mr. Mohan.

ii. In the given scenario, even if Mr. Shyam was absent, Mr. Rahi could not adjourn the meeting, as the requisite quorum was present.

Question-19

LKJ Ltd. is a company having paid up share capital of ` 12.50 crore with total number of members being 3500. The board of directors have called a general meeting (the meeting) to be conducted on 06.05.2023 at 2.00 pm. On the date of the meeting the required quorum was not present within half an hour and hence was adjourned to the next week on 13.05.2023 on same day at same venue. In reference to the above scenario in light of the relevant provisions of the Companies Act, 2013 elucidate upon the following queries of the company.

(i) What will be the fate of the meeting in case two members, in person, were

present at the adjourned meeting held on 13.05.2023?

(ii) In case, on 06.05.2023 a total of 16 members were present but the chairman owing to the unruly behaviour of some members during the meeting had adjourned the same to

13.05.2023 and at the adjourned meeting only 3 members, in person, are present. What will be the fate of such adjourned meeting?

(iii) In case, where such meeting was called by the requisitionists under section 100 of the Act and at such meeting the quorum was not present, what will be the fate of such meeting?

Answer-19

(i) According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company:

a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Quorum not present at the adjourned meeting also: Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

In the given question, the quorum for the given company having 3500 members shall be 15 members personally present.

Where quorum is not present in the adjourned meeting (i.e. 13.05.2023) also within half an hour, then the two members present shall form the quorum.

(ii) The meeting held on 6.05.2023 had 16 members present. Hence, the quorum was present. However, the meeting was adjourned due to unruly behaviour of some members and not for want of quorum. In the said meeting (13.05.2023), only 3 members in person were present. In such a case, these 3 members shall not constitute the quorum and hence, shall stand further adjourned.

(iii) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting, if called by requisitionists under section 100, shall stand cancelled.

Question-20 Silk Textile Limited is a company which is incorporated in India. It holds two subsidiaries- Print Limited (in which it holds 80% of shares) and Stitch Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Silk Textile Limited intends to call an Extraordinary General Meeting (EGM) of Silk Textile Limited. During the same time, the Board of Print Limited also wanted to hold an EGM on urgent basis at Dubai. The Chairman with the consent of his Board wanted to hold the EGM of Silk Textile Limited at Dubai so that he can attend both the EGM. But the Company Secretary advised the Chairman that he cannot hold the EGM outside India.

Referring to the provisions of the Companies Act, 2013, advise the Board of Directors on the following:

(i) Whether the Board of Silk Textile Limited can hold its EGM at Dubai?

(ii) Whether the EGM of Print Limited can be held at Dubai? (5 Marks)

Answer-20

(i) Can the Board of Silk Textile Limited can hold its EGM at Dubai?

As per section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

As per the facts given in the question, Silk Textile Limited is a Company incorporated in India and has two subsidiaries incorporated outside India. In Print Limited, it holds 80% of the shares and Stitch Limited is its wholly owned subsidiary. As Silk Textile Limited is incorporated in India the Company can call the EGM anywhere only in India. Hence, it cannot hold its EGM at Dubai (outside India).

(ii) Whether the EGM of Print Limited can be held in Dubai?
Print Limited is incorporated outside India and its 80% shares are held by Silk Limited (incorporated in India).
Hence, it is not a wholly owned subsidiary of Silk Limited. Only a wholly owned subsidiary of a company incorporated outside India, can hold its EGM outside India. In view of the above, Print Limited cannot hold its EGM in Dubai.

Question-21 Creative Textiles Ltd. is an unlisted public company. The company's paid-up share capital is ` 50 lakh consisting of 5 lakh shares having face value of ` 10 each.
Raman is having 50,000 shares in the company. He is not happy with Somnath, who is a director in the company. He believed that Somnath is acting against the interest of the company. Raman wanted to remove Somnath from the directorship. Removal of a person from the directorship requires the approval of the shareholders in the general meeting. The Annual General Meeting (AGM) of the company has recently been concluded and the next AGM will be held in the next year. Considering the case and referring to the provisions of the Companies Act, 2013, advise:
(i) Can Raman as an individual shareholder make a requisition to the company for calling of the Extra-ordinary General Meeting for putting such resolution?
(ii) If the company does not call the EGM on the requisition of Raman, whether Raman can himself call the EGM? (5 Marks)

Answer-21
(i) Can Raman, as an individual shareholder make a requisition for calling an EGM?
According to section 100 of the Companies Act, 2013, in the case of company having a share capital, EGM may be called by the Board of Directors at the requisition of such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up share capital of the company as on that date carries the right of voting. If the Board does not, within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.
In the given question, Raman is holding 1/10th [5,00,000/50,00,000] of the paid up share capital.
Hence, he can, even as a single
shareholder (holding 1/10th of the paid up share capital), make a requisition to the company for calling the EGM.

(ii) If the company does not call the EGM on the requisition of Raman
If the company does not within 21 days from the date of receipt of a valid requisition from Raman, proceed to call the EGM for the consideration of the matter of removal of Somnath, on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called by Raman himself within a period of 3 months from the date of the requisition.[Section 100(4)].

In this regard, Rule 17 of the Companies (Management and Administration) Rules, 2014 containing the provisions with regard to calling of EGM by requisitionists shall be followed.
Further, section 100 (5) of the Act provides that a meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

Question-22 (i) Members of World One Limited, holding more than 2% of the total voting power wants the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members can do so as per the provisions of the Companies Act, 2013.
(ii) If a member of a listed company who has casted his vote through electronic voting, can attend general meeting of the company and change his vote subsequently?

Answer-22

i) According to section 115 of the Companies Act, 2013, where, by any provision contained in this Act or in the Articles of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.
In such a case, the company shall give its members notice of the resolution in the manner as prescribed in Rule 23 of the Companies (Management and Administration) Rules, 2014.
Further, section 140(4) of the Companies Act, 2013 (the Act), provides provision for the appointment of an auditor other than the retiring auditor. As per this section, special notice shall be required for a resolution at an annual general meeting for appointing a person as an auditor in place of the retiring auditor, or providing expressly that a retiring auditor should not be re-appointed.
In the present case, the provisions of section 115 of the Act have been duly complied with. That is to say the notice of the intention to move such a resolution as to appointment of auditor other than the retiring auditor has been given by members of World One Limited, holding more than 2% (i.e. more than 1 %) of the total voting power. Accordingly, members can do so as per the provisions of the Companies Act, 2013.

ii) According to Rule 20(4) (v) (f) (C) of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.
Thus, in the given question, if a member of a listed company has casted his vote through electronic voting, he can still attend the general meeting of the company but neither he can vote again nor he can change his vote.

Question-23 Top Spinners Foundation is a company registered under section 8 of the Companies Act, 2013 with a view to promote young and talented people towards becoming of world class cricketers. The foundation selects young boys and girls from different parts of the country via talent hunt competitions and other references from its members, thereby giving them proper training with residential facilities at the designated clubs opened for the purpose. The Foundation had been incorporated as a charitable institution in 2016. Currently it is having 1200 members. The Annual General meeting of the company is usually held at the club cum registered office of the company at Jaipur.

The members in one of the general meetings have strongly suggested that the next Annual general meeting of the company be held at a hotel in near vicinity of the Registered office at Jaipur instead of the Club as the same has a congested sitting area.

It was also decided by the foundation itself that a 15 days' notice prior to the Annual General Meeting be given with facility of only physical voting and no E-Voting to be provided to the members.

Referring to the relevant rules and provisions of the Companies Act, 2013 decide on the following:
(i) Whether it is compelling upon the board to consider the directions regarding shift of the venue for the meeting?
(ii) Whether a 15 days' prior notice is valid and as per the law?
(iii) Whether the decision to provide the facility of only physical voting and not E-Voting valid?

Answer-23
(i) Whether it is compelling upon the Board to consider the directions regarding shift of the venue of the meeting?
In the case of section 8 company, in pursuance of the second proviso to section 96(2) of the Companies Act, 2013, the time, date and place of each Annual General Meeting is required to be decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting. [Notification G.S.R. 466(E) issued by the Ministry of Corporate Affairs on the 5th June, 2015].
Hence, the directors are bound to consider the directions regarding shifting of venue for the next Annual General Meeting.
Alternate Answer to Part (i)
As per the facts of the question, the members, in one of the general meetings, have strongly suggested that the next AGM of the company be held near the vicinity of the Registered Office at Jaipur instead of the club as the same has congested sitting area. Since only suggestions have been given in one of the general meetings, the same cannot be construed as a compulsion on the part of the Board to act thereon. A mere suggestion will not tantamount to be a binding direction. In other words, a suggestion is just an idea or an opinion that someone proposes which need be compulsorily acted upon, while a direction is a set of instructions for where to go or what to do.
So, the suggestion by the shareholders is non-binding on the Board.

(ii) Whether a 15 days' prior notice is valid as per law?
Notification G.S.R. 466(E) issued by the Ministry of Corporate Affairs dated 5th June, 2015 provides that section 8 company can hold a meeting with minimum of 14 days' notice as against 21 days' notice otherwise applicable under section 101 (1) of the Companies Act, 2013.
Hence, the director can validly issue a 15 days' notice being greater than 14 days as provided in the notification and the notice is as per the law.

(iii) Whether the decision to provide the facility of only physical voting and not e-voting valid? Yes, as per the provision of section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, section 8 company, having a number of members of 1000 or more, is required to provide e- voting facility to its members at a general meeting. Hence, the decision of the foundation, to provide the facility of only physical voting and not E-voting, is not valid as section 8 Company is having 1200 members.

Question-24 Srinivas Iron and Steel Ltd. is a public sector listed company engaged in the manufacture of high-end steel sheets to be supplied to various other entities country-wide. M/s CVB & Associates, Chartered Accountants, had been appointed as the statutory auditors of the company for the term F.Y. 2023-24. Later in the year a

financial fraud has come to the fore, not reported by the current auditors in their report, leading to dissatisfaction amongst a group of learned members of the company.
The next Annual General Meeting is scheduled on 28.09.2024. The members comprising of Mr. H, Mr. J, Mr. K holding paid up share capital ` 1,50,000; ` 1,00,000; ` 2,50,000 respectively have collectively decided to send a special notice to the company regarding passing of the resolution

at the next Annual General Meeting for appointment of an auditor other than M/S CVB & Associates as the auditor for the next term.

Referring to the provisions of the Companies Act, 2013 elaborate:
(i) Whether the above members can validly issue such Special Notice to the company?
(ii) What will be the last date for issue of such Special Notice by the members to the company?
(iii) Whether the company would have to communicate about the above Special Notice to other members after receiving the same?

Answer-24

(i) Whether the members Mr. H, Mr. K and Mr. J can validly issue special notice to the company?

According to section 115 of the Companies Act, 2013 (the Act), where, by any provision contained in this Act or in the Articles of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

Rule 23 of the Companies (Management & Administration) Rules, 2014, provides that a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.

As per section 140 (4) of the Act, a special resolution is required to be passed for appointment of an auditor other than the retiring auditor at an annual general meeting.

Mr. H, Mr. J and Mr. K are together holding shares of (1,50,000 + 1,00,000 + 2,50,000) = ` 5,00,000, which is equal to the minimum required shares to be held by members for validly issuing a Special Notice. Hence, they can validly ask the company to issue the special notice.

(ii) Last date for issue of Special Notice:

Rule 3 of Companies Management and Administrative Amendment Rules 2014:
The notice referred to in sub-rule (1) shall be sent by members to the company not earlier than three months but at least fourteen days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.
Hence, in the above case, the special notice shall be sent by the members to the company latest by 13.09.2024.

(iii) Whether the company needs to communicate the special notice to the other members after receipt of the same?

Yes, the company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.

Alternate Answer

In the question, it is mentioned that Srinivas Iron and Steel Limited is a Public Sector,

Listed Company, which means that, being a Public Sector Company, it is a Government Company.
According to section 139(5) of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a

financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

Changing the Auditor: For changing the Auditor of a Government Company, the Auditor can be changed after seeking consent of the Board and thereafter by writing to the C&AG, New Delhi, by mentioning the reference of negligence on the part of the Statutory Auditors for not reporting the fraud committed in the Company.

Thereafter, considering the request of the company, the C&AG can change the auditor or the audit firm. However, the remuneration of the auditors shall be approved by the shareholders in its general meeting on the recommendations of the Audit Committee as well the Board of Directors of the company.

UNIQUE ACADEMY FOR COMMERCE

Chapter 14: Directors

Question-1 Mamta is a women director in ABC Ltd. a listed company. On 15th July, 2023 she resigned from the post of women director. The Board of Directors of ABC Ltd., appointed Sanchi as a women director in the board meeting held on 16th September, 2023 to fill the vacancy of women director, which had occurred as a result of resignation of Mamta. Examine the validity of appointment of Sanchi as a women director with reference to the provisions of Companies Act, 2013. What would be your answer, if Sanchi is appointed as a women director in the board meeting held on 1st October, 2023? Dec 2023 2017 Syllabus (5 marks)

Answer-1 As per second proviso to section 149(1) read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, any vacancy in the office of women director shall be filled by the board at the earliest but not later than

iii. Immediately in the next board meeting; or
iv. 3 months from the date of such

vacancy Whichever is later.

In the given case, vacancy in the office of women director arose on 15th July, 2023 and vacancy was filled by the Board in the board meeting held on l6th September, 2023. The period of three months will expire on 15th October, 2023. The Board has filled the vacancy well before the expiry of three months i.e., l5th October, 2023. Thus, appointment of Sanchi as a women director is as per the provision of the Companies Act, 2013.
If, Sanchi is appointed as a women director in the board meeting held on 1st October, 2023, then also her appointment is within the provisions of the Companies Act, 2023, as her appointment is before the expiry of 3 months i.e., 15th October, 2023.

Question-2 Bhupesh is a director of ABC Ltd. which is a Government Company. The company has accepted deposits from public in the financial year 2020-21. As on 31st March 2022, deposits of 51 crore were outstanding and due date of repayment of deposit was 1 st September, 2022. The financial position of ABC Ltd., turned bad and the company failed to repay the deposits which was due for repayment on 1st September, 2022 and such repayment was not made till date. Another company TNC Ltd. wants to appoint Bhupesh as a director in TNC Ltd. in its Annual General Meeting (AGM) to be held on 15th October, 2023. As a Company Secretary, advise to TNC Ltd., with reference to the provisions of the Companies Act, 2013, whether Bhupesh can be appointed as a director of TNC Ltd.? Dec 2023 2017 Syllabus (4 marks)

Answer-2 In the given case, vacancy in the office of women director arose on 15th July, 2023 and vacancy was filled by the Board in the board meeting held on l6th September, 2023. The period of three months will expire on 15th October, 2023. The Board has filled the vacancy well before the expiry of three months i.e., l5th October, 2023. Thus, appointment of Sanchi as a women director is as per the provision of the Companies Act, 2013.
If, Sanchi is appointed as a women director in the board meeting held on 1st October, 2023, then also her appointment is within the provisions of the Companies Act, 2023, as her appointment is before the expiry of 3 months i.e., 15th October, 2023.

Section 164(2) of the Companies Act, 2013 provides that no person who is or has been a director of a company which

a. Has not filed financial statements or annual returns for any continuous period of 3 financial years; or
b. Has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continuous for one year or more,

shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Further, in case of Government Companies, section 164(2) shall not apply vide Notification No. GSR 463(E) dated 05-06-2015.

In the given case ABC Ltd., is a Government Company, so the above said section 164(2) is not applicable to ABC Ltd. In such company, directors are not disqualified for the appointment or reappointment as a director in the same company or any other company. So, Bhupesh who is a director in the Government Company is eligible to be appointed as a director in TNC Ltd.

Question-3 Gem Quartzite Ltd., a top 100 listed company, is having 1,20,000 equity shares of face value Rs. 100, fully paid-up. The Annual General Meeting of the company was convened on 31st August, 2023 after due notice. Fifty members holding 1,00,000 equity shares attended the meeting. The resolution to appoint Shubudhi as an independent director was put to vote. 70,000 votes (including 60,000 votes by the promoter group) were cast in favour of the resolution and 30,000 votes were cast against the resolution. The chairman declared the resolution to appoint Shubudhi as Independent Director as passed. Referring to the provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, state, whether the decision of the chairman that resolution is passed is correct? State your assumptions, if any. Dec 2023 2017 Syllabus (4 marks)

Answer-3

FACTS:

- Company: Gem Quartzite Ltd., a top 100 listed company.
- Share Capital: 1,20,000 equity shares of ₹100 each, fully paid-up.
- AGM Date: 31st August, 2023 (convened after due notice).
- Attendance: 50 members holding 1,00,000 equity shares attended.
- Voting on resolution to appoint Shubudhi as Independent Director:
  - Votes in favour: 70,000 (including 60,000 by promoter group)
  - Votes against: 30,000
- Chairman's declaration: Resolution was passed.

PROVISIONS:

Appointment of Independent Director on the Board of a listed company requires a special resolution to be passed under Regulation 25(2A) of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015. In this case, the votes cast in favour of the resolution is only 60,000 votes as against the requirement of at least 75,000 votes to pass a special resolution. Hence, the special resolution is not passed. However, with effect from 14th November, 2022, proviso to Regulation 25(2A) of the

SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 states that where the special resolution to appoint an independent director fails to get 3/4th majority of members present and voting, if

a. The votes cast in favour of the resolution exceed the votes cast against the resolution and

b. The votes cast by the public shareholders in favour of the resolution is more than the votes cast against the resolution the independent director is deemed to be appointed.

In this case, the votes cast in favour of the resolution by public shareholders is only 10,000 votes whereas the votes cast against the appointment by public shareholders is 30,000 votes.

CONCLUSION:

- The resolution did not obtain 75% majority of votes required for a special resolution.
- The relaxation under the proviso to Regulation 25(2A) does not apply because public shareholders have cast more votes against than in favour.
- Hence, the resolution is not validly passed, and the Chairman's declaration that Shubudhi is appointed as Independent Director is incorrect under SEBI (LODR) Regulations, 2015.

Question-4 Answer the following :
(a) Sudipto was appointed as Director of Pragati CNC Machines Limited. He already holds directorship in nine public companies and one private company which is a subsidiary of a public company. Decide the validity of his appointment.
(b) Debanand did not attend any Board Meeting of Albatross Refrigeration Limited for 16 months due to a severe medical condition with the permission of the Board. Can Debanand continue to be a director in the company?
(c) Ratan, a director of Amaranth Seeds Limited did not pay the last call amount of 5 lakhs for the past seven months. The Call Notice never reached him due to loss in postal transit and hence it is his contention that he is not disqualified to be a director of the company. Decide the validity of his contention. Dec 2023 2017 Syllabus (4 marks)

Answer-4 a. According to Section 2(71) of the Companies Act, 2013, a subsidiary of a public company is deemed to be a public company even when it continues as a private company in its Articles. A director can hold a maximum of 10 directorships in public companies as per Section 165(1) of the Act and as per its Explanation I — For reckoning the limit of public companies in which a person can be appointed as director, Directorship in private companies that are either holding or subsidiary company of a public company shall be included. Sudipto is already holding directorship in 10 public companies including one private company which is deemed to be a public company. Hence, Sudipto cannot be appointed as director in Pragati CNC Machines Limited. His appointment is invalid.

b. According to Section 167(1)(b) of the Act, the office of director is vacated when he absents himself from all the meetings of the Board of Directors (BOD) held during the period of 12 months with or without seeking leave of absence from the company. Hence, despite his medical condition, the position of directorship of Debanand in Albatross Refrigeration Limited has become vacant and he cannot continue to be a director of the company.

c. Ratan cannot take refuge in the fact that he has not received the final call Notice from the company due to loss in postal transit. A director of a company has collective responsibility for all the decisions of the Board of Directors. Call Notice is sent with the approval of the Board. All the decisions of BOD are circulated to all the Directors

whether they attended the meeting of BOD or not. Hence, Ratan cannot take refuge under the non-receipt of call Notice. He stands disqualified from holding directorship in Amaranth Seeds Limited under section 164(1)(f) of the Act ,as he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call.

Question-5 Anil, Sunil and Sunita are proposed to be first directors in the Articles of Association of the proposed company. However, as they do not have DIN would not be able to assume office of director immediately on incorporation of the company. Is there any way out available to obtain DIN simultaneously with incorporation of the company so that the company, on incorporation, will meet the requirement of having minimum number of directors? Advice, referring to the provisions of the Companies Act, 2013. Dec 2023 2022 Syllabus (5 marks)

Answer-5 As per rule 38 of the Companies (Incorporation Rules), 2014, the application for allotment of Director Identification Number upto three Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed for One Person Company, private company, public company and a company falling under section 8 of the Act. Shall be filed in SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus:INC- 32) with the Registrar, within whose jurisdiction the registered office of the company is proposed to be situated. Any person (not having approved DIN) proposed to become a first director in a new company shall have to make an application through web form SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) for allotment of DIN.

For the purposes of filing SPICe Form, the particulars of maximum of three directors shall be allowed to be filled in SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32), and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32) in case of proposed directors not having approved Director Identification Number.

The applicant is required to attach the proof of Identity, address, specimen signature duly verified. etc. along with the application. DIN would be allocated to User only after approval of the form. [Section 153 read with rule 9 of the Companies (Appointment and Qualification of Directors) Rules, 2014].

Once the SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) is processed and found complete, company would be registered and CIN would be allocated. Also DINs gets issued to the proposed Directors who do not have a valid DIN.

Thus, with this facility Anil, Sunil and Sunita may obtain DIN simultaneously with the process of incorporation of the company and can assume the office of directorship immediately on incorporation of the company and meet the requirement of having minimum number of directors.

Question-6 JK Scooters Ltd. is a listed company and wants to appoint a small shareholders' directors suo motu. You are being a Company Secretary of the company apprise the managing director on the following points, referring to the provisions of the Companies Act, 2013.

(a) Is it mandatory for a listed company to appoint small shareholders' director with or without receiving a notice from requisite number of such shareholders?
(b) Tenure of office and retiring by rotation?
(c) Number of small shareholders' directorship.
(d) Small shareholders' director to be an independent director. Dec 2023 2022 Syllabus (5 marks)

Answer-6 (a) According to Section 151 of the Companies Act, 2013 read with rule 7(1) of the Companies (Appointment and qualifications of Directors) Rules, 2014, a listed company may have one director elected by such small shareholders in such manner and on such terms and conditions as may be prescribed. A listed company, may upon notice of not less than:

1. One thousand small shareholders; or
2. One-tenth of the total number of such shareholders, whichever is lower; have a small

shareholders director elected by the small shareholder.
A 'Small Shareholder's Director' may be elected voluntarily by any listed company. Thus, a listed company, may, on its own, act to appoint a Small Shareholder's Director. In such a case, no notice from small shareholder(s) is required. The Act has used the expression "may" and not "shall." Hence, it is not mandatory for a listed company to appoint small shareholders' director.
(b) As per rule 7(5) of the of the Companies (Appointment and qualifications of Directors) Rules, 2014, the tenure of small shareholders' director shall not exceed a period of 3 consecutive years and he shall not be liable to retire by rotation. Further he shall not be eligible for re-appointment after the expiry of his tenure.
(c) As per rule 7(8) of the of the Companies (Appointment and qualifications of Directors) Rules, 2014, a person shall not hold the office of small shareholders' director in more than two companies. If second company is in competitive business or is in conflict with business of the first company, he shall not be appointed in second company.
(d) As per rule 7(4) of the of the Companies (Appointment and qualifications of Directors) Rules, 2014, Small shareholders' director shall be considered as an independent director, if
a. he is eligible for appointment as an independent director as per sub-section (6) of section 149; and
b. he gives a declaration of his independence as per sub-section (7) of section 149

Qusetion-7 Happy Travels Private Limited received a letter of resignation by post on 01-April-2023 purportedly signed by Shyamal Das, Director of the company. The Company Secretary of the company Rohit Biswas, on the directions of the Managing Director, promptly intimated the ROC by filing Form DIR-12 and also placed the information of the resignation of Das on its website. Few days later, the Police came knocking on the doors of the Company Secretary on a complaint given by Das u/s 468 of IPC, 1860 that he never signed such resignation letter and that the letter of resignation purportedly signed by him was a forgery. Referring to the provisions of Companies Act, 2013, decide on the further course of action. June 2024 2017 Syllabus (5 marks)

Answer-7 i) A director of a company may resign from office under section 168 of Companies Act, 2013 (Act) read with Rule (15) of Companies (Appointment and Qualifications of Directors) Rules, 2014 (Rules), by giving a Notice along with reasons for resignation to the company. The Board of Directors (BOD) shall, on receipt of such Notice of resignation from a director, shall take note of the same.

ii) The company shall, within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar of Companies (ROC) in Form DIR-12 and may also post the information on its website as per Rule (15). The BOD shall also mention the fact of such resignation of director in the Report of the Board of Directors under section 134 of the Act laid in the immediately following Annual General Meeting of the company.

iii) The director may, within 30 days from the date of resignation, forward to the ROC a copy of his letter of resignation along with reasons for resignation in Form DIR-11 along with the requisite registration fees as provided under Companies (Registration Offices and fees) Rules, 2014.

iv) The resignation shall be effective from the date on which the notice of resignation was received by the company or the date specified by the director in the Notice of resignation, whichever is later. In this case, the director has filed a criminal complaint stating that the resignation letter was not signed by him, not genuine and also that his signature was forged.

v) However, as decided by NCLAT in a case Harish Jain v Haveli Restaurant and Resorts Limited dated 26/02/2020, (Company Appeal (AT) No. 390 of 2018) when a director alleges that his

signature on the resignation letter was forged, it is for the director to prove that the resignation

Question-8 Four Board Meetings were held during July to December in calendar year 2023. Thunder, a director, attended none of them. For first three meetings he sought leave of absence from the Board but did not inform the Board regarding last meeting as he was hospitalised. In the light of provisions of Companies Act, 2013 examine if he is disqualified to act as a director or otherwise. June 2024 2017 Syllabus (4 marks)

Answer-8

FACTS:

- Thunder, a director, did not attend any of the four board meetings held between July to December 2023.
- He sought leave of absence for the first three meetings.
- He did not inform the Board or seek leave for the fourth meeting, as he was hospitalized.

PROVISION:

- Section 167(1) of the Companies Act, 2013 provides for the cases where the office of a director shall become vacant. Section 167(1)(b) states that the office of a director shall be vacated if he absents himself from all the meetings of the Board of directors held during a period of twelve months with or without seeking leave of absence of the Board.
- Examining the given case, Thunder, the director absented from all the four meetings of the board held from July to December 2023 by seeking leave of absence in first three and not seeking leave of absence in the last one. It is not that he did not attend all the meetings for a period of twelve months. Thus, his office does not become vacant and he can continue to be a director in the Board.
- Disqualification of directors is dealt with under section 164 of the Companies Act, 2013 and is different from vacation of office of directors under section 167. Section 167(1)(a) provides that the office of a director shall become vacant in case he incurs any of the disqualifications specified in section 164, which does not include non-attendance of board meetings as a reason for disqualification

CONCLUSION:

- Thunder has not yet vacated his office, as the absence was only for six months.
- If he continues to remain absent from all board meetings for a total of 12 consecutive months, his office shall become vacant under Section 167(1)(b), even if leave of absence is sought.
- He is not disqualified under Section 164, as non-attendance is not a disqualification ground under that section.

Question-9 Sukanya is director in nine public limited companies, one dormant public limited company and ten private limited companies. She has vast experience in business management and is invited by Green Ltd. to join as director. Discuss the relevant provisions of the Companies Act, 2013 and advise Sukanya. June 2024 2022 Syllabus (4 marks)

Answer-9 The following provisions are contained in Section 165 of the Companies Act, 2013 (the Act) for number of directorships a person can hold in companies.

(1) As per Section 165 (1) of the Companies Act, 2013, after commencement of the Act, no person shall hold office of a director, including any alternate directorship in more than twenty companies at the same time, provided that maximum number of public companies in which a person can be appointed shall not exceed ten.

(2) As per the explanations provided in Section 165(1) of the Companies Act, 2013:
(i) for reckoning the limit of public limited companies in which a person can be appointed as director, the directorship in private companies that are either holding or subsidiary company of a public company shall be included.
(ii) for reckoning the limit of directorships in twenty companies, the directorship in a dormant company shall not be included.
In view of the above provisions for calculating the directorships held by Sukanya, the directorship held in 1 dormant public limited company shall be excluded.
Therefore, she can accept the invitation of Green Ltd. for directorship and after appointment in Green Ltd., the directorships held by her will be within the overall prescribed limit of 20 companies (including not more than 10 Public companies) as indicated under:
1) 10 public limited companies
2) 1 dormant public limited company (excluded from the limit as above)
3) 10 private companies

Question-10 Examine the validity of the following:
(a) Sudarshan Chakraborty, aged 20, is appointed as independent director on the Board of BVS Scooters Limited, a listed company, by passing an ordinary resolution in the annual general meeting.
(b)Karna Kumar Baag, nominee director appointed by BICCI Bank Ltd. is removed from directorship at the annual general meeting of Reliable Capacitors Limited, a listed company, by passing an ordinary resolution. June 2024 2017 Syllabus (4 marks)

Answer-10 (a) According to Sec 149(6) of Companies Act, 2013 read with Regulation 25(2A) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), an independent director of a listed company shall be appointed by passing a special resolution in the general meeting. According to Regulation 16(1)(b) of LODR the independent director shall not be less than 21 years of age. Hence, the appointment of Sudarshan Chakraborty, aged 20 is invalid on both counts.
(b) Section 161(3) of the Companies Act, 2013, provides that subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

However, there is an exception to this sub section in case of specified IFSC public company and specified IFSC private company. Companies, which secure financial assistance from financial institutions, banks, major shareholders, debenture holders, etc. usually confer on their lenders, power to appoint and terminate the appointments of their nominees on their Boards. Such power is conferred by incorporating appropriate provisions in the financial assistance agreements.
These institutions/banks etc. also insist on borrowing companies to alter their articles of association so as to empower them to appoint and terminate the services of their nominee directors on the Board of the company as and when they like. These directors are known as nominee directors. They are not liable to retire by rotation and hold office at the pleasure of their nominating agencies. They cannot be removed by the company.
Procedure to appoint a nominee director is same as appointment as additional director by the Board or appointment of director other than retiring director by the company in general meeting. Depending upon the term and condition of agreement with the

appointing bank/institution/ Government, the company may choose any of these two methods.
Thus, in view of above, Karna Kumar Baag, a nominee director appointed by BICCI Bank Ltd. Cannot be removed by Reliable Capacitors limited, a listed Company, by passing an ordinary resolution.

Question-11 Metal Ltd. created a mortgage over its heavy machineries in respect of a loan given by the sister of Krish, a director of the company. This fact was known to all the directors but the interested director neither disclosed his interest nor abstained from voting when the loan transaction was approved at the Board meeting. Decide the validity of the said transaction under provisions of' Companies Act, 2013. June 2024 2017 Syllabus (4 marks)

Answer-11

FACTS:

- Metal Ltd. has created a mortgage over heavy machinery for a loan provided by the sister of Krish, a director of the company.
- All directors knew about the relationship, but Krish did not disclose his interest in the transaction.
- Krish participated and voted in the Board meeting that approved the transaction.
- The question arises as to the validity of the transaction in light of Krish's non-disclosure and participation.

PROVISIONS:

- Section 184 of the Companies Act, 2013 requires the disclosure of interest by a director and prohibits an interested director to participate or vote in respect of that particular transaction at the Board meeting subject to certain exceptions for private limited companies. Further, his presence will not be counted for quorum too. But where the whole body of directors is aware of the fact relating to interest of a director, formal disclosure is not necessary. (Ramakrishna Rao vs Bangalore Race Club). The mere voting by an interested director will not render the contract void or voidable unless in the absence of that vote, there would have been no quorum.
- The mere fact that voting in such situation the director shall be liable to a penalty of one lakh rupees under section 184 (4) of the Act does not ipso facto render the contract void or voidable. In this case, there is no allegation of earning secret profits.
- Under section 184 of the Act, there does not exist any ban on contract in which directors are interested. The only requirement is that interest should be disclosed. Even where the interest is not disclosed, the transaction is only voidable against the interested director and not void as decided in Narayan Das Shreeram Somani vs Sangli Bank.
- Under section 184(3) of the Act, a contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

CONCLUSION:

- Krish was interested in the transaction as the loan was from his sister, and he failed to disclose this interest.
- He also participated and voted, which is a violation of Section 184(2).
- However, since all directors were aware of the relationship, the absence of formal disclosure may not render the transaction void automatically, especially in light of the Ramakrishna Rao case.
- The transaction is valid unless the company chooses to void it, under Section 184(3).
- Krish is liable to a penalty of ₹1,00,000 under Section 184(4) for failure to disclose and abstain.

Question-12 Jupiter Ltd. appointed Ashok as an Independent director for a term of three years. Upon completion of his first term, he was re-appointed for another term for the same period. Now

upon completion of the second term, company again wants to re-appoint him as the independent director of the company considering the fact that he has not completed the consecutive term of ten years. Advise the Company on the feasibility of his re-appointment. June 2024 2017 Syllabus (4 marks)

Answer-12

FACTS:

- Jupiter Ltd. appointed Ashok as an Independent Director for a first term of three years.
- Upon completion of the first term, he was re-appointed for another three-year term (i.e., second consecutive term).
- Now, upon completion of the second term, the company proposes to re-appoint Ashok again as an Independent Director.
- The company's justification is that Ashok has not completed ten years in total.

PROVISIONS:

- Section 149(10) of the Companies Act, 2013 prescribes that subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.
- Section 149(11) states that no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.
- General Circular No. 14/2014 issued by MCA dated 9th June, 2014 clarifies that though an independent director is to be appointed for a term up to 5 years, there is no bar on appointment for a term of less than 5 years. However, such appointment for less than 5 years is to be counted as one term and at the end of two such consecutive terms, the director should demit his office, even if the total number of years of his appointment in such two consecutive terms is less than 10 years. In such a case, at the end of the 2 consecutive terms, he cannot be reappointed again as independent director and the cooling period of 3 years shall start.

CONCLUSION:

- Ashok has already completed two consecutive terms as an Independent Director, each of three years.
- Even though the total tenure is less than 10 years, it still counts as two full terms under the Act.
- As per Section 149(11) and MCA Circular 14/2014, Jupiter Ltd. cannot reappoint Ashok immediately as an Independent Director.
- Ashok can be reappointed only after a cooling-off period of 3 years, during which he cannot be associated with the company in any other capacity.

Question-13 Whether the group of 1500 small shareholders are entitled to propose the appointment of small shareholders' director? Is it mandatory for the company to appoint such director, if a valid notice is received from the small shareholders? Decide, the tenure of the small shareholders' director. June 2024 2022 Syllabus (5

marks)

Answer-13 Terms & Conditions for Small Shareholders' Director
Section 151 read with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014 laid down the following terms and conditions for appointment of Small Shareholders Director

(SSD), which include inter alia the following:

Election of small shareholders director: A listed company, may upon notice of not less than:
(a) One thousand small shareholders; or
(b) one-tenth of the total number of such shareholders,
whichever is lower; have a small shareholder director elected by the small shareholder.
1/10th of the small shareholders (SS) would come to 2000. However, the notice has been given by more than 1000 small shareholders. Hence, they are entitled to make such requisition.
Whether mandatory:
A listed company may upon notice appoint Small Shareholder Director (SSD). A Small Shareholders' Director may be elected voluntarily by any listed company. Thus, a listed company may on its own, act to appoint a Small Shareholder's Director. In such a case, no notice from small shareholder(s) is required. The word used is "may" in Section 151 read with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014. Hence, it is not mandatory for the company to appoint SSD, even if the notice is received from the eligible SS.

Tenure of office and no retirement by rotation:
The tenure of small shareholder director shall not exceed a period of 3 consecutive years and he shall not be liable to retire by rotation. Further he shall not be eligible for re-appointment after the expiry of his tenure.

Question-14 Rohit, a director of a company to know the provisions of the Companies Act, 2013 relating to inspection and extract of minutes of the Board meetings by the director, member and other persons and preservation period thereof. Explain. June 2024 2022 Syllabus (5 marks)

Answer-14 Inspection and Extracts of Minutes of Board meetings

- The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors. Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book. However, certified copies of any Resolution passed at a Meeting may be issued even earlier, if the text of that Resolution had been placed at the Meeting.
- A Director is entitled to inspect and receive, a copy of the Minutes of a Meeting held before the period of his Directorship. A Director is entitled to inspect and receive a copy of the signed Minutes of a Meeting held during the period of his Directorship, even if he ceases to be a Director.
- The Company Secretary in Practice appointed by the company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties.
- While providing inspection of Minutes Book, the Company Secretary or the official of the company authorised by the Company Secretary to facilitate inspection shall take all precautions to ensure that the Minutes Book is not mutilated or in any way tampered with by the person inspecting.
  A Member of the company is not entitled to inspect the Minutes of Meetings of the Board for the purpose and shall be kept in the registered office or such place as Board may decide.

Preservation of Minutes

The minutes books of the Board and committee meetings shall be preserved permanently and kept in the custody of the Company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as Board may decide Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as

handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.

The above provisions can be explained to him

Question-15 Akshay for going abroad for 6 months, appointed Raghav as a director in his place during his absence from India. The Board, rejecting the appointment of Raghav, appointed Madhuri as an alternate director to Akshay. Explaining the relevant provisions assess the validity of appointment of Raghav and Madhuri under the provisions of the Companies Act, 2013. Also, state the tenure for which the alternate director is appointed. Dec 2024 2017 Syllabus (5 marks)

Answer-15

FACTS:

- Akshay, a director of a company, was scheduled to go abroad for 6 months.
- Akshay appointed Raghav to act as a director in his place during his absence.
- The Board of Directors rejected Raghav's appointment and instead appointed Madhuri as an alternate director in place of Akshay.
- The company is assumed to have articles that authorize the Board to appoint an alternate director.

PROVISIONS:

Section 161(2) of the Companies Act, 2013(Act), empowers the Board, if so, authorized by its articles or by a resolution passed by the company in general meeting, to appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India. Section 161 (2) of the Act applies to all companies, whether public or private.

Conditions for appointment of an alternate director:

a) The Board of Directors of a company must be authorised by its articles or by a resolution passed by the company in general meeting for appointment of the alternate director.
b) The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.
c) The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the company or holding directorship in the same company.
d) If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that he is qualified to be appointed as an independent director under the provisions of this Act

- Power to appoint:

  The Board may appoint an alternate director only if it is authorized by the articles or by an ordinary resolution passed at a general meeting. The right to appoint an alternate director vest in the Board. The original director has no right to appoint an alternate director. The members have no right to appoint an alternate director, the members can only empower the Board to appoint alternate director as and when board thinks fit.

- Method of appointment:
  There is no condition that an alternate director shall be appointed only by passing a resolution at a Board meeting. Therefore, an alternate director can be appointed by passing a resolution by circulation. Term of office of an alternate director:
  a) An alternate director shall not hold office for a period longer than that permissible to the

director in whose place he has been appointed. If the original director ceases to be a director by reason of death or vacation of office under section 167 the alternate director shall immediately cease to hold his office

b) The alternate director shall vacate his office when the original director in whose place he has been appointed returns to India.

CONCLUSION:

- The appointment of Raghav by Akshay is invalid, as a director cannot appoint his own alternate under the Companies Act, 2013.
- The Board has the legal authority to make such appointments, provided it is authorised by the Articles of Association or a general meeting resolution.
- Therefore, the appointment of Madhuri by the Board is valid, assuming the articles empower the Board to do so.
- Madhuri, as an alternate director, will vacate her office:
  - When Akshay returns to India, or
  - If Akshay ceases to be a director for any reason before that.

Question-16 Pankaj is a director in many companies since long. His DIN is active and has been used many times for filing of the documents and forms with the Registrar of Companies. After attaining the age of 70 he has decided to retire from the directorship of all companies surrendering the DIN. With reference to the provisions of the Companies Act, 2013 explain the provisions relating to cancellation/surrender or deactivation of DIN. Also specify, whether Pankaj would succeed in surrendering the DIN. Dec 2024 2017 Syllabus (4 marks)

Answer-16

FACTS:

- Pankaj is an individual who has served as a director in multiple companies for a long period of time.
- His Director Identification Number (DIN) is active and has been used multiple times for filing statutory documents and forms with the Registrar of Companies (RoC).
- Upon attaining the age of 70 years, he has retired from all directorships and now intends to surrender his DIN permanently.

PROVISIONS:

As per rule 11 of the Companies (Appointment and Qualifications of Directors) Rules, 2014, the Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received along with fee as specified in Companies (Registration Offices and Fees) Rules, 2014 from any person, cancel or deactivate the DIN in case

a) the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number;
b) the DIN was obtained in a wrongful manner or by fraudulent means;
c) of the death of the concerned individual;
d) the concerned individual has been declared as a person of unsound mind by a competent Court;
e) if the concerned individual has been adjudicated an insolvent. Provided that before cancellation or deactivation of DIN pursuant to clause (b), an opportunity of being heard shall be given to the concerned individual;

f) on an application made in Form DIR -5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed director in any company and the said DIN has never been used for filing any document with any authority the Central Government may

deactivate such DIN. Provided that before deactivation of any DIN in such case, the Central Government shall verify e-records. Once a person is appointed as a director in any company as per the Companies Act 2013, he cannot relinquish his DIN in the future. Even if he/she doesn't remain a director anymore in that company or in any other company, his/ her DIN will exist as it is.

CONCLUSION:

- In the given case, Pankaj's DIN has been used in connection with filings and appointments as a director in multiple companies.
- Therefore, the conditions required for voluntary surrender under Rule 11(f) are not satisfied.
- Pankaj cannot surrender or deactivate his DIN, even though he is no longer a director and has retired.
- His DIN will remain permanently valid and active, as per the provisions of the Companies Act, 2013.

Question-17 As a senior company secretary suggest the Board–the terms and conditions for the appointment, tenure and vacation of office of small shareholders director with reference to the provisions of the Companies Act, 2013. Dec 2024 2017 Syllabus (4 marks)

Answer-17 Terms & Conditions for Small Shareholders' Director
Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014 laid down the following terms and conditions for appointment of small shareholders director, which are as under:

Election of small shareholders director:
A listed company, may upon notice of not less than:
(a) One thousand small shareholders; or
(b) one-tenth of the total number of such shareholders,
whichever is lower; have a small shareholder director elected by the small shareholders.
A Small Shareholders Director may be elected voluntarily by any listed company. Thus, a listed company, may on its own, act to appoint a Small Shareholder's Director. In such a case, no notice from small shareholder(s) is required.
Notice of intention to propose a candidate:
The small shareholders intending to propose a person as a candidate for the post of small shareholder director shall leave a signed notice of their intention with the company at least 14 days before the meeting under their signatures specifying their details and proposed director's details. The details include name, address, shares held and folio number etc. If the proposer does not hold any shares in the company, the details of shares held, and folio number need not be specified in the notice.

Statement by the proposed small shareholders director:
The notice shall be accompanied by a statement signed by the proposed director for the post of small shareholder director stating: (a) his Director Identification Number. (b) that he is not disqualified to become a director under the Act; and (c) his consent to act as a director of the company

Tenure of office and no retirement by rotation:
The tenure of small shareholders' director shall not exceed a period of 3 consecutive years, and he shall not be liable to retire by rotation. Further he shall not be eligible

for re-appointment after the expiry of his tenure.

Grounds of vacation of office:

A Small shareholders' director shall vacate the office if (a) he incurs any of the disqualifications specified in section 164. (b) the office of the director becomes vacant in pursuance of section 167.
(c) he ceases to meet the criteria of independence as provided section 149 (6).

Question 18 Case Study :
Introduction :
Disha Beauty Products Limited (the company), incorporated five years ago with its registered office in Mumbai, India, began manufacturing cosmetic products under the brand name 'Kasturi.' The product range includes nail enamel, foundation cream, compact, mascara, eye pencil, etc. Due to its organic composition and maintaining the consistency in the quality the company's products quickly gained popularity, capturing a significant share of the Indian market. Under the leadership of Disha, the Managing Director, the company experienced growth in turnover and profitability, earning a strong reputation in both consumer and industry circles.

Additional Directors : To facilitate future expansion, the company intended to appoint Joe and Jogesh as additional directors due to their extensive experience and business acumen. Disha had previously proposed Joe for a regular director position at the Annual General Meeting (AGM), but the motion failed, and Joe was not appointed, Jogesh is proposed to be appointed as an additional director for the first time. The Board of Directors, exercising powers conferred by the Articles of Association, appointed both Joe and Jogesh as additional directors in the board meeting held on 31st March 2024. The AGM, originally due on 30th September 2024, could not be held on the due date. The company obtained a three-month extension from the Registrar of Companies and held the AGM on 31st December 2024.

Loan/Security to other Company : The company provided security for a loan of ` 25 lakh taken by Rupa Chemicals Limited (RCL), in which Harshal and Sujit, directors of the company, hold 10% and 15% equity shares, respectively, with voting rights. The Secretarial Auditor observed that this transaction might be invalid. The company argues that it has complied with all legal formalities and asserts that none of the directors is interested in RCL as per the law.

Board Meeting : The Board of Directors planned to issue equity shares to the public and held a meeting on 15th May 2024 to approve the prospectus. Out of the 12 directors, three attended the meeting physically, and one attended via audio-visual means. One other director had informed the company secretary on 1st April 2024, of his intention to attend the next board meeting electronically. The company advised him to attend in person, stating that electronic arrangements could not be made as the intimation of his intention to attend the meeting electronically was not given at the beginning of the calendar year 2024.

Appointment of relative of the Managing Director : Juley, a company secretary and sister of Disha, the Managing Director, is proposed to be appointed as a 'Consultant' with a monthly remuneration of Rs. 2.75 lakh. Disha seeks clarification on the applicable legal provisions concerning this appointment.
Based on the above information and referring to the provisions of the Companies Act, 2013 you are requested to address the following :

(a) Examine the validity of the appointment of Joe and Jogesh as additional directors of Disha Beauty Products Limited. Also, discuss the tenure of their appointment.

(b) The Secretarial Auditor has observed that the transaction involving Disha Beauty Products Limited providing security for a Rs. 25 lakh loan taken by Rupa Chemicals Limited is invalid. Analyse the validity of this transaction.

(c) Determine, whether the quorum was present at the Board meeting held on 15th May, 2024

for the approval of the Prospectus. Additionally, assess whether the company's advice to a director to attend the meeting in person instead of electronically – due to the notice of electronic participation not being given at the beginning of the calendar year – was valid.

(d) Determine, discussing the relevant provisions of the Companies Act, 2013, whether the appointment of Juley as a consultant for Disha Beauty Products Limited constitutes a related party transaction. Additionally, explain the necessary approval and disclosure compliance requirements for such transactions. Dec 2024 2022 Syllabus (5 marks)

Answer-18

(a) Validity of appointment and tenure of Additional Director:

Provision: Section 161(1) of the Companies Act. 2013, provides that the articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Analysis and Answer:

In case of default in holding annual general meeting, the additional director shall vacate his office on the last day on which the annual general meeting ought to be held. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director. Section 161(1) of the Companies Act, 2013 applies to all companies, whether public or private.

Joe was previously proposed to be appointed as a regular director in the Annual General Meeting (AGM) by completing the required formalities. However, the motion to appoint him a director failed and he could not, therefore, be appointed as proposed. Hence, the Board of Directors can't appoint him as an additional director. His appointment is invalid ab initio and the question of tenure in his case does not arise as he has not occupied his office of director at any point of time.

Jogesh is validly appointed as an additional director by the Board in term of the power conferred by the Articles. Since, the company has obtained from the Registrar an extension of time for holding the AGM till 31st December, 2024 the company is not in default in not- holding the AGM on 30th September, 2024. The applicable due date of AGM in this case is 31st December, 2024 on which date the company has held the AGM. Hence, Joseph shall vacate his office at the commencement of the AGM held on 31st December, 2024, if not appointed as a regular director at that meeting.

(b) According to section 185(2) of Companies Act 2013, a company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that –

(a) A special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and

(b) the loans are utilised by the borrowing company for its principal business activities. Explanation-For the purposes of this sub-section, the expression “any person in whom any of the director of the company is interested” means −

(a) any private company of which any such director is a director or member;

(b) anybody corporate at a general meeting of which not less than twenty-five per cent. of the total

voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
(c) anybody corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

Analysis and Answer
Section 185(2) of the Companies Act, 2013 is applicable in the situation where the lending corporate is giving loan or providing guarantee or security in connection with the loan taken by the other corporate in which the director/s of lending are interested. Harshal and Sujit, directors of lending company- Disha Beauty Products Limited are together holding 25% voting powers in Rupa Chemicals Limited, Hence, in term of clause (b) of explanation to Section 185(2) Rupa Chemicals Limited is a body corporate in which the directors of the lending company are interested. The transaction of providing security shall be valid, if the following two conditions are fulfilled:
1. Disha Beauty Products Limited should pass a special resolution in the general meeting, and
2. A declaration should be given by Rupa Chemicals Limited that the loans are utilised for its principal business. The transaction would be invalid if Disha Beauty Products Limited had passed a resolution in the general meeting but not a special resolution. The requirement of declaration has been satisfied.
In view of above, as Disha Beauty Products Limited (the lending company) failed to pass a special resolution in the general meeting the security has been provided in violation of section 185(2) of the Companies Act, 2013 and hence the observation of the Secretarial Auditor that the transaction is invalid is correct.

(c) Quorum for the Board meeting: As per Section 174(1) of the Companies Act, 2013, one third of total strength or two directors, whichever is higher, shall be the quorum for a Board meeting.

For the purpose of determining the quorum, the participation by a director through Video Conferencing or other audio-visual means shall also be counted, unless he is to be excluded for any item of business under any provisions of the Act or the rules

Para 1.2.3 of SS-1 provides that any Director may participate through Electronic Mode in a Meeting unless the Act or any other law specifically prohibits such participation through Electronic Mode in respect of any item of business.

The MCA vide Notification dated June 15, 2021 has omitted Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 which was related to the matters not to be dealt with in a meeting through video conferencing or other audio-visual means. Approval of prospectus was such an item which was included in the list of restricted items prior to this notification. Accordingly, with the said amendment, now the previously restricted matters including inter alia the item of approval of the prospectus can be considered in a Board Meeting held through video conferencing or other audio-visual means.

Total directors on the Board of the company are 12 and one third of them i.e. 4, being higher than 2, shall constitute the quorum. 3 directors participated in the meeting through physical presence and 1 director through electronic mode who will also be counted for the quorum making the presence of total 4 directors.

Hence, the quorum in the Board meeting was present.

Validity of the advice of the company:

Para 1.3.4 of SS-1 provides that the Notice shall inform the Directors about the option available to them to participate through Electronic Mode and provide them all the necessary information. If a Director intends to participate through Electronic Mode, he shall give sufficient prior intimation to the Chairman or the Company Secretary to enable them to make suitable arrangements in this behalf.

The Director may intimate his intention of participation through Electronic Mode at the beginning of the Calendar Year also, which shall be valid for such Calendar Year. Though such declaration shall not debar him from participation in the meeting in person, in such case a sufficient intimation of attending in person is required to be sent to the company. In view of above it is to be noted that a director is required to give sufficient prior intimation of his intension to participate in the Board meeting not necessarily at the beginning of the calendar year.

In the case scenario, the director concerned has given sufficient prior intimation of his intention to participate in the Board meeting through electronic means. Hence, he will be entitled to attend the meeting through electronic means or in person as per his discretion. Giving such a notice at the beginning of the year is an enabling provision and not the mandatory requirement.

Hence, the advice of the company to the director concerned to attend the meeting in person and not through electronic mode for the reason that he had not given the intimation at the beginning of the calendar year is not valid.

(d) The appointment of Juley as a consultant of Disha Beauty Products Limited attracting the relevant provisions regarding related party transaction are identified as below:

Related Party
Under Section 2(76) of Companies Act 2013, inclusive definition of “related party”, with reference to a company, has been given which include inter alia (i) a director or his relative;

Relative
As per Section 2(77) Companies Act, 2013 the sister is deemed to be a relative of another being related to another person.

Nature of Related Party Transactions
Section 188 of the Companies Act, 2013 provides that except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as prescribed under Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, no company shall enter into any contract or arrangement with a related party with respect to : (vi) such related party’s appointment to any office or place of profit in the company, its subsidiary company or associate company:

Office or Place of Profit
As per Explanation to Sub-Section (i) of Section 188 the expression “office or

place of profit" means any office or place where such office or place is held by:
(a) a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
(ii) an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from

the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise.

Prior Approval of the Company by a Resolution
First Proviso to the Section 188 (1) of the Act provides that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as prescribed, shall be entered into except with the prior approval of the company by a resolution. Rule 15 of the Companies (Meetings of board and its Powers) Rules, 2014 provides that except with the prior approval of the company by a resolution, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into,
(a) as contracts or arrangements with respect to clauses (a) to I of sub-section (1) of section 188, with criteria as mentioned below Clause V: Appointment to any office or place of profit in the company, its subsidiary company or associate company- Monthly remuneration exceeding Rs. 2.50 lakh. Disclosure in Board's Report Section 188(2) of the Companies Act, 2013 provides that every related party contracts or arrangement shall have to be disclosed in the Board's report and referred to shareholders along with the justification for entering into such type of transactions in the prescribed form i.e., Form no. AOC-2 [pursuant to Section 134(3)(h) and Section 188(2)]. Form AOC-2 shall be signed by the persons who have signed the Board's Report.

Analysis and Answer Nature of transaction and approval compliance: Appointment of Juley who is a sister (i.e. relative) of Disha, a managing director of a company is a related party transaction by way of holding office or place of profit. Since the monthly remuneration involved in this related party transaction is exceeding Rs. 2.50 lakh (which is Rs. 2.75 lakh in this case) the prior approval of the Board of directors and the shareholders by passing an ordinary resolution in the general meeting of the company is required.

Disclosure compliance: The related party transaction of appointing Juley shall be disclosed by the company in the Board's report and referred to shareholders along with the justification for entering into such type of transactions in the prescribed form i.e., Form no. AOC-2.

UNIQUE ACADEMY FOR COMMERCE

Chapter 15: Board composition and powers of the boards

Question-1 Venus Hospitality Limited is an unlisted public company. The following information is given as per the financial statements of the company as on 31st March, 2023:

Paid-up capital: Rs. 5 crore
Security premium: Rs. 2 crore
Revaluation reserve: Rs. 10 crore Reserves and surplus: Rs. 1 crore Long-term loans: Rs. 8 crore

The Board of Directors of the company have resolved by a board resolution to borrow a further long-term loan of Rs. 5 crore.

The Articles provide that the company cannot borrow beyond its net worth. Referring to the provisions of Companies Act, 2013, examine the validity of the Board Resolution.
Will your answer differ, if it is a private company? Dec 2023 2017 Syllabus (5 marks)

Answer-1 Section 180(1)(c) of the Companies Act, 2013 restricts the borrowing powers of the Board of Directors. The powers to borrow has to be exercised by the Board in a duly convened Board Meeting. The Board cannot borrow beyond its authority as stipulated by the Articles of Association of the company and by the Act. Section 180(1) prescribes that the Board shall, inter alia, borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed the aggregate of the paidup capital, free reserves and security premium only with the consent of members in a general meeting by passing a special resolution.

In the instant case, the aggregate of paid-up capital and free reserves and security premium of the company is 5+2+1 = Rs. 8 crore. As the company already has an outstanding long-term loan of Rs. 8 crore, no further loan can be borrowed just by passing a Board Resolution. To borrow any further sum, the approval of members by a special resolution is necessary. Thus, as Venus Hospitality Limited is a public company, the Board Resolution is not valid as per the above mentioned provisions.

If the company is a private limited company, as per exemption given vide Notification dated 05/06/2015 the private companies are exempted from complying with the requirements of Section 180 of the Act. Even then the company cannot borrow a further sum of Rs. 5 crore as in this case as, the Articles provide that the company cannot borrow beyond its net worth.

The net worth of the company is 5+2+1=Rs. 8 crore. Revaluation reserve is not taken into account for ascertaining the net worth of a company as per Section 2(57). The long-term loan outstanding is Rs. 8 crore. Hence, the company cannot borrow the additional loan of Rs. 5 crore as the stricter provisions of Articles will prevail even if it is a private company.

Question-2 In the given case, PQR Ltd. is the lending company which intends to grant a loan of Rs. 125 crore to XYZ Ltd. (borrowing company), the fact that XYZ Ltd. has taken loan from public financial institution or has accepted deposits from public are not relevant for the purpose of section
186. In the Board meeting of PQR Ltd. the approval to grant a loan of Rs 125 crore was passed with consent of 4 directors out of 5 directors present in the Board meeting. However, section 186 provides that unanimous approval is required to make a loan to body corporate or person, thus

the approval of 4 directors does not comply the requirement of section 186. Hence, PQR Ltd. cannot make a loan of Rs. 125 crore to XYZ Ltd. Dec 2023 2017 Syllabus (5 marks)

Answer-2

FACTS:

- PQR Ltd., the lending company, intends to grant a loan of ₹125 crore to XYZ Ltd., a body corporate.
- The fact that XYZ Ltd. has taken loans from public financial institutions or accepted deposits from public is not relevant for determining compliance under Section 186 of the Companies Act, 2013.
- In the Board meeting of PQR Ltd., 5 directors were present, and the resolution to grant the loan was passed with the consent of 4 directors.
- The loan proposed exceeds the limits prescribed under Section 186(2), thereby triggering additional compliance requirements.

PROVISIONS:

As per section 186 of the Companies Act, 2013 there are some conditions on the Company to grant loan to any other body corporate or person. These conditions are as under

1) A resolution is to be passed in the Board Meeting with the consent of all the directors present in the board meeting and the prior approval of the public financial institution (PFI) concerned where any term loan is subsisting, is obtained. However, prior approval of PFIs is not required in case aggregate of loans and guarantees so made alongwith the amount of loan or guarantees proposed to be made does not exceed the limit prescribed under section 186(2) and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution. [Section 186(5)]
2) Approval of the members by special resolution required, if the limit specified under section 186(2) is exceeded. [Section 186(3)]
3) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting. [Section 186(8)]
4) The lending company shall make the required disclosure in its financial statements. [Section 186(4)]
5) The company shall, within 7 days, enter the prescribed particulars in the register maintained as per section 186(9)

CONCLUSION:

- In the given case, PQR Ltd. has proposed a loan of ₹125 crore, which is above the limits prescribed under Section 186(2). Hence, prior member approval by special resolution is required under Section 186(3).
- More importantly, the approval of the Board was obtained with the consent of only 4 out of 5 directors present at the meeting.
- As per Section 186(5), such a loan requires the unanimous consent of all directors present at the meeting.
- Since unanimity was not achieved, the Board resolution is invalid, and the company cannot proceed to grant the loan, even if a special resolution of

members is obtained later.

- ∴ Therefore, PQR Ltd. cannot lawfully make the loan of ₹125 crore to XYZ Ltd. in the absence of unanimous Board approval.

Question-3 ‘‘The role of audit committee on oversight of internal audit functions of a listed company is wider than the requirements of Companies Act, 2013’’. Explaining which companies are required to constitute an audit committee and appoint an internal auditor, comment on the statement, referring to the relevant provisions of the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Dec 2023 2017 Syllabus (4 marks)

Answer-3 Every listed company and every public company with a paid-up capital of Rs. 10 crore or more or turnover of Rs. 100 crore or more or outstanding loans of Rs. 50 crore or more is required to constitute an Audit Committee under section 177 of the Companies Act, 2013.

Every listed company and every unlisted public company having a paid-up capital of Rs.50 crore or more or turnover of Rs. 200 crore or more or outstanding loans of Rs. 100 crore or more or outstanding deposit of Rs. 25 crore or more is required to appoint an internal auditor under section 138 of the Act read with Rule 13 of Companies (Accounts) Rules, 2014. Private companies with a turnover of Rs.200 crore or more or outstanding loans of Rs. 100 crore or more are also required to appoint an internal auditor.

The role of audit committee of a listed company is prescribed under Part C of Schedule II of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

The audit committee of a listed company shall evaluate the internal financial controls and risk management systems as per section 177 of the Companies Act, 2013 and the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 [SEBI (LODR) Regulations]. In addition, the SEBI (LODR) Regulations, 2015 requires that the audit committee shall review the structure of the internal audit department, staffing, scrutiny of officials handling the internal audit department, reporting structure and frequency of conducting internal audits.

Thus, the role and scope of internal audit function in a listed company is much wider than the requirements of the Companies Act, 2013.

Question-4

Financial information for Questions 8A(iii) & 8A(iv) :

You are CFO of GCL Textiles Limited. The last three years' Balance Sheet of GCL Textiles Limited contains the following financial information and figures:

(All amount in ₹)

	As at 31.03.2021	As at 31.03.2021	As at 31.03.2021
Paid up capital	25,00,000	25,00,000	37,50,000
General Reserve	20,00,000	21,25,000	25,00,000
Credit Balance in Profit & Loss account	2,50,000	3,75,000	5,00,000
Debenture Redemption Reserve	7,50,000	10,00,000	12,50,000
Securities Premium	1,00,000	1,00,000	1,00,000
Secured Loans	5,00,000	7,50,000	15,00,000

On going through other records of the Company, the following is also determined:

Net profit for the year(as calculated in accordance with the provisions of the Companies Act, 2013)	*6,25,000*	*9,50,000*	*17,25,000*

In the ensuing Board Meeting of GCL Textiles Limited scheduled to be held on 15th October 2023, among other items of agenda, following items are also appearing :

(a) To decide about borrowing from Banks/Financial institutions on long-term basis.

(b) To decide about contributions to be made to charitable funds.

Based on above information, you are required to find out as per the provisions of the Companies Act, 2013, the following :

(iii) Amount upto which the Board of Directors of GCL Textiles Limited can borrow from Banks/Financial institution without seeking the approval of members in general meeting; and

(5 marks)

Answer-4 Section 180 of the Companies Act, 2013 deals with the restrictions on the power of Board. As per Section 180(1)(c) of the Companies Act, 2013, the Board of Directors of a company, without obtaining the approval of shareholders in a general meeting by passing special resolution, can borrow money including money already borrowed upto an amount which does not exceed the aggregate of paid-up capital of the company, free reserve and securities premium. Such borrowing shall not include temporary loans obtained from the company's bankers in ordinary course of business. Here, free reserves do not include the reserves set apart for specific purpose. Since the decision to borrow is to be taken in a meeting to be held on 15th October 2023, the figures relevant for this purpose are the figures as per the Balance Sheet as at 31.03.2023. According to the above provisions, the Board of Directors of GCL Textiles Limited can borrow without the approval of shareholders in a general meeting

Particulars	*Amt in Rs.*
Paid up Capital	37,50,000
General Reserve(being free reserve)	25,00,000
Credit balance in Profit & Loss Account (to be treated as free reserve)	5,00,000
Debenture Redemption Reserve (This reserve is not to be Considered since it is kept apart for specific purpose of debenture redemption)	-
Securities Premium	1,00,000
Aggregatepremium of paid up capital, Free reserve And securities premium	68,50,000
Total borrowing power of the Board of Directors of the company, i.e.100% of the aggregate of paid up capital, free reserves and securities premium	68,50,000
Less : Amount already borrowed as secured loans	15,00,000
Amount upto which the Board of Directors can further Borrow without the approval of shareholders in a general meeting	53,50,000

Question-5 The amount upto which the Board of Directors of GCL Textiles Limited can contribute to Charitable funds during the financial year 2023-24 without seeking the approval of members in general meeting. Dec 2023 2022 Syllabus (5 marks)

Answer-5 As per section 181 of the Companies Act, 2013, the Board of directors of a Company without obtaining the approval of shareholders in a general meeting, can make contributions to genuine charitable and other funds upto an amount which, in a financial year, does not exceed five per cent of its average net profits during the three financial year's immediately preceding, the financial year. Accordingly, to the above provisions, the Board of Directors of GCL Textiles Limited can make contributions to charitable funds, without obtaining approval of the shareholders in a general meeting, upto an amount calculated as follows:

Net Profit for the three years (as calculated in accordance with the provisions of the Companies Act, 2013):

Particulars	*Rs.*
For the financial year ended 31.03.2021	6,25,000
For the financial year ended 31.03.2022	9,50,000
For the financial year ended 31.03.2023	17,25,000
Total	33,00,000
Average of net profits during three preceding years	11,00,000
Five percent thereof	55,000

Hence, the maximum amount that can be donated by the Board of Directors to charitable funds by GCL Textiles Limited during the financial year 2023-24 will be Rs. 55,000 without seeking the approval of the shareholders in a general meeting.

Question-6 You are a company secretary of Bunny Ltd. a listed company and Bunny Ltd. has proposed in November, 2023 to make an investment of Rs. 80 lakhs in the equity shares of Hunny Investment (Pvt.) Ltd. the face value of which is Rs. 40 lakh. The financial data related to Bunny Ltd. and Hunny Investment (Pvt.) Ltd. as on 31st March, 2023 is furnished below :

	Particulars	**Bunny Ltd. (Rs. in Lakh)**	**Hunny Investment Pvt. Ltd. (Rs. in Lakh)**
I.	Authorized Capital	800	400
II.	Subscribed and paid-up capital		
	(a) Equity shares	240	300
	(b) Preference shares	20	—
III.	Capital Reserves	20	30

IV.	Free Reserves	20	—
V.	Borrowings from Public Financial Institution	40	—

(A) Bunny Ltd. (the company) furnished the following information related to it as on the date of proposed acquisition :

(1) No other body corporate has invested any money in its share capital.

(2) The company has granted guarantee to the tune of ₹ 100 lakh to a nationalized bank in connection with the loan granted to Richa Ltd.

(3) It has granted housing loan of ₹ 20 lakh to its employees, other than its managing director or whole-time director.

(B) Hunny Investment (Pvt.) Ltd. furnished the following other information related to it :

(1) The total assets as on 31st March, 2023 were ₹ 330 lakh including investment in shares & debentures of body corporate ₹ 200 lakh.

(2) The income derived from investment in shares and debentures was ₹ 30 Lakh out of the gross income of ₹ 100 Lakh.

Of the total shareholders of the company there are 20,000 shareholders who are holding shares of nominal value of not more than ₹ 20,000 each. A total number of 1500 such small shareholders have proposed Mr. X as their candidate to be the small shareholders' director.

Based on the above information and referring to the provisions of the Companies Act, 2013 and relevant notifications/circulars issued by the Ministry of Corporate Affairs (MCA) answer the following :

(a) Identify the authority and the mode of approval for the investment proposal of ₹ 80 lakh in the equity shares in the above scenario.

(5 marks)

(b) *(i) Whether approval of the Public Financial Institution would be required for the investment proposal ?*

(ii) Is there any exemption available to Bunny Ltd. in case Bunny Ltd. is a private company ?

(3+2=5 marks)

(c) Whether Hunny Investment Pvt. Ltd. is an investment company based on the data given above ?

(5 marks)

Answer-6

a. Section 186 of the Companies Act, 2013(the Act) deals with the provisions relating to Loan and Investment by a Company. According to Section 186(2) of the Act, no Company shall directly or indirectly

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire, by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding 60% of its paid-up share capital (equity and preference), free reserves and securities premium account or 100% of its free reserves and securities premium account, which ever is more.

As per Section 186 (3) of the Act, where the aggregate of the loan and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan guarantee or security proposed to be made or given by the Board, exceed the limits specified under Section 186(2) of the Act, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorized by a special resolution passed in a general meeting.

As per Section 186 (5) of the Act, any investment shall be made or loan or guarantee or security given by the Company only after the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the Public financial Institution concerned where any term loan is subsisting shall also be obtained.

Calculation

According to the information given in the problem:

60% of paid-up share capital (equity and preference), Free reserves and securities premium account is Rs. 168 Lakh (i.e. 60% of [Rs. 240 + 20+20] = Rs.168 Lakh) or 100% percent of its free reserves and securities premium account is Rs. 20 lakh;

Hence, investment up-to Rs. 168 lakh is allowed without seeking prior authority by special resolution passed in a general meeting.

Bunny Ltd has already given guarantee to the tune of Rs. 100 Lakh to a Nationalized Bank in connection with the loan granted to Richa Ltd.

The aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made is Rs. 180 Lakh (i.e. Rs. 100 Lakh existing guarantee
+ proposed investment of Rs. 80 Lakh) which is exceeding the limit of Rs. 168 Lakh.

Therefore, the proposed investment shall be first approved by the Board with the consent of all the directors present at the meeting (i.e. unanimously) and then approved by the members by passing a Special resolution.

Note: The MCA has clarified that loans and/or advances made by the companies to their employees, other than the Managing or Whole Time Director are not governed by Section 186 of the Act. Hence, it is not considered in the computation of limit.

b) (i) In terms of Section 186(5) of the Companies Act, 2013, prior approval of the Public Financial Institution (PFI) shall not be required where:
   - the aggregate of the loan and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan guarantee or security proposed to be made or given by the Board, does not exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more under Section 186(2) of the Act; and
   - there is no default in repayment of loan installments or payment of interest thereon as per the terms and conditions of such loan to the PFI.

   However, in this case, for the Bunny Limited, the aggregate of the amount for which guarantee or security so far provided, along with the investments, proposed to be made is Rs. 180 Lakh (i.e. Rs. 100 Lakh existing guarantee + proposed investment of Rs. 80 Lakh) which has exceeded the limit of Rs. 168 Lakh (i.e.the limits specified under Section 186(2) of the Act). Since the proposed investment will exceed the limits specified under section 186(2) of the Act, prior approval of the Public Financial Institution will be required.

   (ii) Section 186(2) stipulates that no company shall directly or
   indirectly. give any loan to any person or other body corporate;
   give any guarantee or provide security in connection with a loan to any other body corporate or person; and
   acquire by way of subscription, purchase or otherwise, the securities of any other

body corporate, exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more. Accordingly, Section 186 of the Companies Act, 2013 is

applicable to both public and private companies. Hence, no exemption is available to Bunny Ltd. in case it is a private company.

c) It is clarified by way of clause (a) of Explanation to Section 186 of the Companies Act, 2013 that the expression "investment company" means a company whose principal business is the acquisition of shares, debentures or other securities. Further, a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities:
   - if its assets in the form of investment in shares, debentures or other securities constitutes not less than fifty percent of its total assets; or
   - if its income derived from investment business constitutes not less than fifty percent as a proportion of its gross income.

   From the above provisions, it is clear that even if a company satisfies any one out of two criteria, it would be treated as an investment company.

   Investment Test

   The total assets of Hunny Investment Pvt Ltd. as on 31.03.2023 is Rs.330 Lakh. Investment in shares and debentures of a body corporate is Rs. 200 lakh which is more than 50% of the total assets.

   Income Test

   Income derived from investment in shares and debentures is Rs. 30 Lakh which is less than 50% of the gross income of Rs. 100 Lakh Since, Hunny Investment Pvt. Ltd satisfies the Investment Test, it is an Investment Company.

Question-7 Speciality Nuts and Bolts Limited, a profit-making listed company has given the following information for the FY ending 31st March, 2024 :

Item	Amount (Rs. in crores)
Paid-up Equity share capital	24
Preference share capital	8
General Reserve	80
Security Premium A/c	48
Long term loans from Financial Institutions	130
Short term credit from banks	20

A meeting of the Board of Directors of the company was convened on 31st May, 2024 to consider and approve giving a loan of Rs. 50 crore to Lamps and Shades Limited, a loss making listed company for its operational needs. Of the seven directors present at the meeting, all the directors, except one independent director, approved the proposal of granting of loan to Lamps and Shades Limited and the chairman declared the resolution as passed with the requisite majority and the company proceeded to disburse the loan. Referring to the provisions of the Companies Act, 2013 decide, whether the making of proposed amount of loan falls within the powers of the Board. Additionally, assess, the validity of granting such a loan with the approval of the

members in the general meeting. Dec 2024 2017 Syllabus (5 marks)

Answer-7

FACTS:

- A Board meeting was convened on 31st May 2024 by a company to consider granting a loan of ₹50 crore to Lamps and Shades Ltd., a listed company currently making losses.
- Out of seven directors present, six approved the loan, and one independent director dissented.
- The Chairman declared the resolution as passed with requisite majority, and the loan was disbursed.
- The company's net worth is ₹160 crore (₹24 cr paid-up capital + ₹8 cr reserves + ₹80 cr free reserves + ₹48 cr securities premium).
- The company seeks to determine:
    1. Whether this loan falls within the powers of the Board, and
    2. Whether the loan can be granted with members' approval, if necessary.

PROVISIONS:

- According to section 186(2)(a) and (3) of the Companies Act, 2013 read with Rule 13 of the Companies (Meeting of Board and its Powers) Rules, 2014, no company shall directly or indirectly, give any loan to any person or other body corporate exceeding 60% of its (paid-up share capital + free reserves + security premium account) or 100% of its (free reserves+ security premium account) whichever is more, without the approval of the members by passing a special resolution.
- In this case, 60% of net worth of the company is {0.6 * (24+8+80+48 = 160 crore)} = Rupees 96 crore. The total of free reserve and security premium is (80+48) = Rupees 128 crore. Hence, the company can, theoretically, give loan upto the higher of the two amounts which is Rupees. 128 crore.
- As the Board of Directors are considering granting of only Rupees. 50 crore to Lamps and Shades Limited, the loan is, prima facie, within the prescribed limits of the Board itself. No special resolution by members is necessary in this case.
- However, Section 186(5) states that no investment shall be made or loan or guarantee or security by the company unless the resolution sanctioning the loan is passed at the meeting of the Board with the consent of all the directors present at the meeting. In this case, as the board resolution has not been passed unanimously, the resolution is not valid.

CONCLUSION:

- Although the loan of ₹50 crore is within the financial threshold that allows the Board to approve it without shareholder approval, the procedural requirement under Section 186(5) has not been met.
- Since the loan was not approved unanimously by all directors present at the Board meeting, the Board resolution is invalid.
- Consequently, the disbursement of the loan is not legally compliant, and even obtaining shareholders' approval cannot cure this defect.
- ∴ Therefore, the Board exceeded its authority, and the grant of the loan is invalid under the Companies Act, 2013.

Question-8 Deep Sea Trawlers Limited, a public listed company has given the following information for the FY ended 31st March, 2024:

Particulars	Rs. In crores
Paid-up Equity share capital	12

Preference share capital	4

General Reserve	40
Security Premium A/c	24
Long term loans from Financial Institutions	65
Short term temporary credit from banks	10

A meeting of the Board of Directors (BOD) was convened on 31st May, 2024 to consider and approve availing a further term loan of Rs 25 crore from the Financial Institutions. Advise the Board of Directors about obtaining a further loan of Rs. 25 crore under the approval of the appropriate competent authority with reference to the provisions of the Companies Act, 2013. Dec 2024 2017 Syllabus (5 marks)

Answer-8 According to the provisions of Section 180(1)(c) of the Companies Act, 2013, pertaining to restrictions on powers of the Board of Directors (BOD), the BOD shall exercise only with the consent of the company by a special resolution, inter alia, the power to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and security premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

In the given scenario the aggregate of paid up share capital Rs. 16 crore (12+4), GR i.e. FR Rs. 40 crore and Securities Premium A/c Rs. 24 crore that comes to Rs. 80 crore. The outstanding term loans of the company, excluding temporary short-term loan, is Rs. 65 crores. Hence, the company can borrow further loan up to Rs. 15 crore under the exclusive authority of the Board of directors. However, the proposed further loan is Rs. 25 crore which is beyond the authority of the Board and hence the approval of the shareholders in a general meeting by way of a special resolution would be required.

Accordingly, in this case the proposed further loan can be obtained under the authority of a special resolution to be passed in the general meeting of the shareholders.

Question-9 Spa and Resorts Ltd, is a listed company with a paid-up equity share capital of ` 6 crore. The Board of Directors of the company has a total strength of 9 directors, none of them is the independent director. The company has also not appointed a company secretary on the contention that its paid up share capital is less than ` 10 crore. On 1st July, 2024 the company received a show cause notice from Bombay Stock Exchange (BSE) for imposition of a fine of ` 20 lakh for non-appointment of a company secretary and the independent directors. As the secretarial advisor to the company, assess the validity of the show-cause notice with reference to the provisions of the Companies Act, 2013 and relevant SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Dec 2024 2017 Syllabus (4 marks)

Answer-9

FACTS:

- Spa and Resorts Ltd. is a listed company with a paid-up equity share capital of ₹6 crore.
- The Board of Directors consists of 9 directors, none of whom are independent directors.
- The company has not appointed a Company Secretary, citing that its paid-up capital is less than ₹10 crore.
- On 1st July 2024, the company received a show cause notice from BSE

proposing to impose a fine of ₹20 lakh for non-compliance in relation to:

1. Non-appointment of a Company Secretary
2. Non-appointment of Independent Directors

PROVISIONS:

According to Regulation 6 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), every listed company is required to appoint a qualified Company Secretary in its employment as the Compliance Officer.

Even though the paid-up share capital of Spa and Resorts Ltd. is of 6 crores which is less than ten crores, as the company is a listed company, it is required to appoint a qualified company secretary in its employment to appoint him as the compliance officer.

According to Section 149 of the Companies Act, 2013, read with Regulation 24 of SEBI (LODR) Regulations, every listed company is required to appoint at least 1/3 of its total strength of BOD as independent director. In this case the listed company has not complied with the requirements of both the Act and the SEBI (LODR) Regulations. Hence on this count also, the company is liable.
In a similar case of Advance Lifestyles Ltd v BSE dated 24th December 2019, the Securities Appellate Tribunal (SAT) has dismissed the appeal filed by the company for non-appointment of compliance officer and independent directors and upheld the fine of Rs. 20.40 lakhs imposed by BSE.

CONCLUSION:
In the light of the above provisions and the case law the company-

- Spa and Resorts Ltd., being a listed company, is mandatorily required to:
  - Appoint a qualified Company Secretary as Compliance Officer under Regulation 6 of SEBI LODR, regardless of its paid-up capital.
  - Appoint at least 3 Independent Directors under Section 149(4) of the Companies Act, 2013 and SEBI LODR Regulations.
- The company's contention that appointment of a Company Secretary is not required due to paid-up capital being below ₹10 crore is not valid in the context of its listing obligations.
- Based on the provisions and the *Advance Lifestyles Ltd.* case precedent, the show cause notice issued by BSE is valid, and the company is liable for the stated non-compliances.

Question-10 You are requested to explain the provisions of the Companies Act, 2013, and the SEBI (LODR) Regulations, 2015, regarding the vigil mechanism/whistleblower policy, addressing the following points:
(a) Which companies are required to establish a vigil mechanism?
(b) What safeguards against victimization must be provided, and who are they meant to protect?
(c) Who is responsible for overseeing the vigil mechanism in companies with and without an audit committee?
(d) What are the disclosure requirements related to the vigil mechanism? Dec 2024 2022 Syllabus (5 marks)

Answer-10
(a) Establishment of vigil mechanism: Section 177(9) of the Companies Act 2013 read with Rule 7(1) of the Companies (Meetings of Board and its Powers) Rules, 2014 provides for establishment of Vigil Mechanism for their directors and employees to report their genuine concerns or grievances as under:
(1) Every listed company:
(2) the companies which accept deposits from the public;
(3) the companies which have borrowed money from banks and public financial

institutions in excess of fifty crore rupees.

Regulation 4(2)(d)(iv) of SEBI (LODR) Regulations, 2015 provides that the listed company shall devise an effective vigil mechanism/whistle blower policy enabling stakeholders, including

individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.

(b) Safeguards: Section 177(9) of the Companies Act, 2013 read with Rule 7(4) of the Companies (Meetings of Board and its Powers) Rules, 2014- The vigil mechanism set up as above, shall provide for adequate safeguards against victimisation of employees and Directors who use such mechanism and make provision for direct access to the Chairperson of the Audit Committee or the Director nominated to play the role of Audit Committee in appropriate or exceptional cases. In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.
Further, Regulation 22 of the SEBI (LODR) Regulations, 2015 provides that the listed company shall formulate a vigil mechanism/ whistle blower policy for directors and employees to report genuine concerns and such mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism and also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases. It may therefore be noted that while section 177(9) of the Companies Act, 2013 mandates to establish a vigil mechanism for directors and employees to report genuine concerns, in case of a listed company, such mechanism is available to all stakeholders.

(c) To oversee the vigil mechanism: Rule 7(2) and (3) of the Companies (Meetings of Board and its Powers) Rules, 2014-The companies which are required to constitute an Audit Committee shall oversee the vigil mechanism through the Committee and if any of the members of the Committee have a conflicted of interest in a given case, they should recuse themselves and the others on the Committee would deal with the matter on hand. In case of other companies (not required to constitute Audit Committee), the Board of Directors shall nominate a Director to play the role of Audit Committee for the purpose of vigil mechanism to whom other Directors and employees may report their concerns. Regulation 18(3) of SEBI (LODR) Regulations, 2015 prescribes the role of committee as specified in PART C of Schedule II to review the functioning of whistle blower mechanism.

(d) Disclosure requirement: As per proviso to section 177(10) of the Companies Act, 2013-The details of establishment of the Vigil Mechanism is required to be disclosed by the company on its website, if any, and in the Board’s report.

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Chapter 16: Meetings of Board and its Committees

Question-1 The meeting of Board of Directors (BOD) of Amarchand Lalchand Exports limited, a listed company was called on Sunday, the 9th July, 2023 for consideration of quarterly financial results. One of the directors has recently shifted his residence and his present contact details have not been provided to the company. Referring to the provisions of the Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 explain the period of notice, mode of service of notice to all directors including the director whose changed contact details are not available with the company and compliance requirement of intimating the stock exchanges. Dec 2023 2017 Syllabus (4 marks)

Answer-1 **Period of Notice:** According to Section 173(3) of the Companies Act, 2013, read with Para 1.3.6 of SS-1, not less than 7 days of Notice in writing shall be given to every director at their address registered with the company and such Notice shall be sent by hand delivery or by registered post or by electronic means. Provided that a meeting of the Board may be called at shorter Notice to transact urgent business provided at least one independent director, if any, shall be present at the meeting.
Mode of Notice: As the meeting of Board of Director (BOD) is scheduled on 9th July, 2023, Sunday, the last date for giving Notice is 02nd of July 2023 if the Notice is sent by electronic means like email or fax. If a director does not have an email id or the current email id of the director has not been furnished to the company, the Notice is to be sent two more days earlier by Registered Post or Speed Post by 30th June 2023. In the absence of details of the postal or email address or any change thereto of a director, the notice of BOD meeting shall be sent by Registered Post or Speed Post by 30th June 2023 to the address appearing in the DIN registration of the director.
Compliance Requirement of Stock Exchange: As the company is a listed company, as per Regulation 29 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the company shall give prior intimation to the stock exchange at least 5 working days in advance excluding the date of intimation and the date of meeting of BOD. And such intimation shall include the date of such board meeting.

Question-2 The Board Meeting of Western India Fertilizers & Chemicals Ltd., an unlisted public company, with Registered Office at Mumbai, was called at 6.00 p.m. on Sunday, the 2nd April, 2023 at Shimla after issuing due notice. The total strength of the Board was 12. Position of two directors was vacant. Five directors attended the Board meeting–two directors including the chairman in person and three other directors through video conferencing from Los Angeles, USA. Having taken the first roll call and, after the chairman confirmed the presence of quorum, the internet connection of the three directors attending through video conferencing got disrupted and they did not attend the rest of the Board meeting. The chairman proceeded with the business of the meeting and declared that all the resolutions listed for the meeting were duly passed as the agenda papers and draft resolutions were already circulated to the directors along with the notice. Referring to the provisions of the Companies Act, 20l3, decide the validity of the place of the board meeting and resolutions passed. Dec 2023 2017 Syllabus (4 marks)

Answer- 2 According to Para 1.2.2 of SS-1, the board meeting could be held at any place, on any day and at any time. Hence, conducting the meeting away from Registered Office at Shimla on a Sunday at 6.00 pm is in order. As per Para 3.3 of SS-1, directors participating through electronic mode are also counted for quorum.

However, Para 3.1 of SS-l stipulates that Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

In this case, the quorum is 1/3rd of current strength of the board (rounded off to the next higher number) or 2 directors whichever is higher. Hence, the quorum of 4 was present at 6.00 pm when the board meeting started. However, as the quorum for voting on resolutions was not present due to communication problems, the chairman cannot proceed with the Board Meeting and the resolutions thereat can't be passed at the meeting. According to Section 174 of the Companies Act, 2013 read with Para 1.1.2 of SS-1, the chairman is required to adjourn the board meeting with the concurrence of the other director present in person at the meeting, to the next week, same place, same day. Hence, all the board resolutions passed without valid quorum are void.

Question-3 The Board of Directors of Omega Computer Systems Limited, a listed company, consisted of twelve directors out of which the position of two directors were vacant, The Company Secretary, under the authority of the Chairman, sent a circular resolution on 1st July, 2023 to all directors both by registered post and email. By 7th July, 2023, out of ten directors, six directors assented to the proposal while four directors (including two interested directors) requested convening a proper Board meeting to decide the issue. Referring to the provisions of Companies Act, 2013, decide, whether the resolution by circulation is passed? Dec 2023 2017 Syllabus (4 marks)

Answer-3

FACTS:

- Omega Computer Systems Limited is a listed company with a Board strength of 12 directors.
- Two positions on the Board are vacant, leaving 10 directors in office.
- On 1st July 2023, a circular resolution was sent to all 10 directors by the Company Secretary (under Chairman's authority) through registered post and email.
- By 7th July 2023:
  - 6 directors assented to the resolution.
  - 4 directors (including 2 interested directors) requested that the matter be decided at a proper Board meeting.

PROVISIONS:

- According to Section 175 of the Companies Act, 2013, a company may pass resolutions by circulation. However, no resolution by circulation shall be deemed to have been passed unless the resolutions have been circulated in draft form together with necessary papers to all directors at their registered address in India by hand delivery or by speed post or by courier or through email. The resolution by circulation must be passed by majority of directors entitled to vote. In this case, two interested directors are not entitled to participate or vote on the resolution. As six out of eight eligible directors, have approved the resolution, in an ordinary course, the resolution by circulation is deemed to be passed.

- According to Para 6.5 of SS-1, passing of Resolution by circulation shall be considered as if it had been passed at a duly convened Meeting of the Board.

- However, as per Para 6.3.2 of SS-1,if not less than one third of the total number of directors of the company require that a resolution must be decided only at a

duly convened Board meeting, the Chairman should convene a Board Meeting to decide on the issue.

- Interested directors are also entitled to demand that a circular resolution be decided in a regular Board Meeting.

As four directors including two interested directors have requested convening a proper Board Meeting to consider the issue which is more than 1/3th of the current strength of the Board, the chairman has no option other than calling a Board Meeting to decide the issue.

CONCLUSION:

- In this case, the current Board strength is 10 directors.
- One-third of 10 = 3.33, which rounds up to 4 directors (as at least one-third is required).
- Since 4 directors (including 2 interested directors) have requested that the matter be decided at a Board meeting, this satisfies the threshold under Para 6.3.2 of SS-1.
- Even though 6 out of 8 eligible directors assented to the resolution (excluding 2 interested directors), the circular resolution cannot be deemed passed.
- This is because the requisition of 1/3rd of directors to hold a meeting overrides the passing of the resolution by circulation.

 Therefore, the resolution by circulation is NOT validly passed, and the35 Chairman must convene a Board Meeting to decide the matter.

Question-4 The following information is given as per audited accounts as on 31st March, 2023:

(Rupees in crore)

Name	*Status*	*Paid-up Capital (₹)*	*No. of Debenture-holders*	*No. of Shareholders*
Sun Ltd.	*Unlisted*	*125*	*Nil*	*1001*
Moon Ltd.	*Listed*	*575*	*1001*	*11000*
Neptune Ltd.	*Unlisted*	*9*	*1250*	*999*

With respect to above answer the following:

(i) Which companies are required to constitute Stakeholders Relationship Committee (SRC)?

(ii) What is the minimum number of meetings to be held by SRC in a financial year.

(iii) What is the minimum number of members in the constitution of SRC?

(iv) Who can be the Chairperson of the SRC? Dec 2023 2017 Syllabus (4 marks)

Answer-4 Answer of the given question is as below under the provisions of the Companies Act, 2013-

i. Section 178(5) of the Companies Act, 2013 provides the constitution of the Stakeholders relationship committee. The Board of directors of company which consist of more than 1000 shareholders, debenture holders, deposit holders and any other security holders at any time during a financial year shall constitute a Stakeholders relationship Committee. All Company i.e., Sun Ltd., Moon Ltd. and Neptune Ltd. meets the above criteria. Hence, all are required to constitute SRC.

ii. As per SS-1, Stakeholders Relationship Committee shall meet as often as necessary subject to the minimum number and frequency prescribed any law or any authority or as stipulated by the Board. Under the regulation 20(3A) of SEBI (Listing Obligation

and Disclosure Requirements) Regulations, 2015 [SEBI (LODR) Regulations], the Stakeholders Relationship Committee shall meet at least once in a year.
iii.As per Section 178(5) of the Companies Act, 2013, Stakeholders Relationship Committee shall consist of chairperson who shall be a non-executive director and such other members as may be decided by the Board. Under Regulation 20 of SEBI (LODR) Regulations, 2015 the listed

company shall constitute a Stakeholders Relationship Committee to specifically look into various aspects of interest of shareholders, debenture holders, and other security holders. It shall consist of at least 3 directors, with at least 1 being an independent director.

iv. As per Section 178(5) of the Companies Act, 2013, the chairperson of this committee shall be a non-executive director.

Question-5 PQR Limited wants to constitute an Audit Committee in the ensuing Board meeting of the Company. Pursuant to the applicable provisions of the Companies Act. 2013, draft a board resolution covering the following matters:

(i) Member of the Audit Committee
(ii) Chairman of the Audit Committee
(iii) Quorum for a meeting of the Audit Committee
(iv) Any 2 functions of the said Committee. Dec 2023 2022 Syllabus (5 marks)

Answer-5 "**RESOLVED THAT** pursuant to Section 177 of the Companies Act, 2013 an Audit Committee consisting of the following Directors, who are financially literate, be and is hereby constituted:

(1) Mr—Independent Director
(2) Mr—Independent Director
(3) Mr—Independent Director
(4) Mr—Independent Director
(5) Mr—Managing Director
(6) Mr—Chief Financial officer

"**RESOLVED FURTHER THAT** Mr. .....(DIN), an Independent Director of the Company, having accounting and / or related financial management expertise, be an is hereby appointed as Chairman of the Audit Committee, and he shall preside the meeting of the Audit Committee from time to time, and as per SS - 2 read with other applicable provisions of the Companies Act, 2013, the Chairman of the audit committee shall be present at Annual general meeting of the Company to answer shareholders' queries."

"**RESOLVED FURTHER THAT** the quorum for a meeting of the Audit Committee shall be three directors (other than the Managing Director), out of which at least two shall be independent directors".

"**RESOLVED FURTHER THAT** the Audit Committee shall perform all the functions as laid down in section 177(4) of the Companies Act, 2013 including but not limited to:

(a) Make the recommendation for appointment, remuneration and terms of appointment of the auditors of the company;
(b) Revise and monitor the independence and performance of auditors of the company and the effectiveness of the audit process."

"**RESOLVED FURTHER THAT** the Audit Committee shall review the quarterly and annual financial statements and submit the same to the Board with its recommendation".

Question-6 SNS Limited is expanding its business in UAE and to look after the business affairs abroad proposes to appoint Vikram as an additional director. He is M. Tech and had done his executive MBA from IIM, Bangalore and has a working experience in corporate sector at a top- management level. Since the next Board meeting is not likely to be held early it is proposed to appoint him as an additional director by obtaining a board approval through resolution by circulation. You are, being a company secretary of the company, requested to draft a resolution by circulation

along with brief note thereon for consideration and approval of the directors in compliance with the provisions of the Companies Act, 2013. Dec 2023 2022 Syllabus (5 marks)

Answer-6 Resolution No. _____

Mr.....(Director)
Dear Sir

Resolution by Circulation

The following Resolution is intended to be passed by circulation as per the provisions of Section 175 of the Companies Act, 2013. A note explaining the urgency and necessity for passing the said Resolution by circulation is enclosed.

"RESOLVED THAT pursuant to Section 161 of the Companies Act, 2013, and other applicable provisions, including any modification or re-enactment thereof and the provisions of the Articles of Association of the Company, Mr. Vikram (Name of Director), holding DIN: __, be and is hereby appointed as an Additional Director on the Board of the Company, effective from_____.

RESOLVED FURTHER THAT Mr. Vikram shall hold office up to the date of the next Annual General Meeting (AGM) of the company or the last date on which the AGM should have been held, whichever is earlier.

RESOLVED FURTHER THAT (Name of the Authorized Director) (DIN) be and is hereby authorized to do all acts, deeds, matters and things as may be deemed necessary in connection therewith."

None of the Directors are deemed to be concerned or interested in the Resolution.

*Assent / Dissent / Require Meeting
(*Strike off whichever is not
applicable) Place:
Date:

Signatur
e Name of
Director(DIN)

Brief note on the resolution by circulation for appointment of an additional director

The company is expanding its business in UAE for which it needs a dynamic, young, qualified, and experienced person to head and look after the affairs of the business abroad.

Mr. Vikram has done his M.Tech from an esteemed institute of technology and after that Executive MBA from IIM, Bangalore. He has five years' experience of working in a corporate sector at the top management level and can shoulder the responsibilities for which the company is looking for. He has provided required declaration that he is not disqualified to be appointed director of the company, his DIN and consent to act as an additional director, if appointed.

The Articles of the Company provides for appointment of additional director by the Board of directors. He is recommended to be appointed additional director of the company with effect from date the resolution, by circulation, is passed by the majority of directors.

Since the next board meeting is not likely to be held early it is proposed to appoint him as such by obtaining the Board's approval through a resolution by circulation to meet the urgency. Hence, a draft circular resolution along with all supporting documents are attached herewith for information of the directors.

Kindly indicate your response to the aforesaid Resolution, by appending your signature and the date of signing in the space provided beneath the Resolution and return one copy to the undersigned or by e-mail at the address mentioned below so as to reach us on or before_____

All Directors are requested to return the resolution duly approved or otherwise and signed to that effect to the registered office of the company within a period of seven days.

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For _____(Name of Company) Sd/
Managing Director(DIN) / Company Secretary e-mail id:
Address:
Contact No.

Question-7 Referring to the provisions of the Companies Act. 2013 read with SS-1 explain, whether the board meeting can be convened at a shorter notice and what are the conditions subject to which such meeting may be held? When shall the decision of the Board taken at the meeting called at a shorter notice come into effect, if the company does not have an independent director? Also, state the venue for the Board meeting, if conducted through video conferencing/ audio-video means where directors participated from the different places/cities. Dec 2023 2022 Syllabus (5 marks)

Answer-7 Section 173(3) of the Companies Act, 2013 requires that not less than seven days' notice in writing shall be given to the directors for the Board meeting. Notice issued at a shorter period than 7 days shall be called as a shorter notice. As per SS-1 the fact that the meeting is being held at a shorter notice shall be stated in the notice. Therefore, yes the Board Meeting can be convened at a shorter notice.
Board meeting, at a shorter notice to transact urgent business shall be held, subject to following conditions:
(a) If the company is required to have independent director:
1. Presence of at least one independent director is required.
2. In case of absence of independent director, decision taken at such meeting shall be circulated to all the directors, and shall be final only on ratification thereof by at least one independent director.

As per para 1.3.11 of the SS-1, in case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.

As per Rule 3(6) of the Companies (Meetings of Board and its Powers) Rules, 2014, with respect to every meeting conducted through video conferencing or other audio-visual means authorized under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

Question-8 (i) Meeting of Board of directors of Kasturi Hospitality Private Ltd. was adjourned. D could not attend the original meeting due to preoccupation. He had sought leave of absence on this ground which was granted. There was no extraordinary item of business to be discussed in the original meeting. Notice of adjourned meeting was not sent to D. Comment.

(ii) Saptarshi, a small shareholder director, has specified to the Company Secretary that agenda and notes on agenda for forthcoming board meeting on approval of accounts be sent to him by e-mail. Due to urgency the company had to convene the board meeting at a shorter notice suddenly. The secretary arranged to deliver the agenda and notes thereon by hand at his residence. Saptarshi opposed to this mode of delivery and threatened to resign from the office. Discuss if the objection is tenable in the light of secretarial standards. June 2024 2017 Syllabus (2+3=5 marks)

Answer-8 (i) In line with para 1.3.6 of Secretarial Standard 1(SS-1) notice of an adjourned board meeting shall be given to all directors including those who did not attend the meeting on the originally convened date. Therefore, though D could not attend the original meeting due to preoccupation by seeking leave of absence which was granted, notice of adjourned board meeting should be sent to him whether or not

there is any extraordinary business to be transacted in the adjourned meeting.

(ii) Para 1.3.7 of SS-1 provides that where a director specifies a particular means or delivery of

agenda and notes thereon these papers shall be sent to him by such means. But in case of a meeting conducted at a shorter notice the company may choose an expedient mode of sending agenda and notes on agenda.

Applying the provisions in the given situation, delivery of agenda and notes thereon by hand at residence of small shareholder director Saptarshi when board meeting is convened at a shorter notice suddenly is valid though he had specified the delivery of same to him by email earlier. The objection raised by Saptarshi is not tenable

Question-9 On receipt of the notice and agenda notes from MNO Ltd., Kamal, Director has requested for participation through video conferencing on the scheduled date of the meeting. As a Company Secretary, what should be your advice to the Chairperson of the Board? Also, can the Chairperson attend the Board meeting through video conferencing? Advise the Company in the matter. June 2024 2017 Syllabus (4 marks)

Answer-9 Yes. It is mandatory under section 173(2) of the Companies Act, 2013 for the company to allow the participation of directors in a meeting through video conferencing, unless the Companies Act, 2013 or any other law specifically prohibits such participation through electronic mode in respect of any item of business.
Accordingly, subject to the prior intimation to that effect received from the director sufficiently in advance so that the company is able to make suitable arrangements on this behalf, the Chairman shall make arrangements to allow the participation of the said Director in the meeting through video conferencing in accordance with the said Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014. However, if the request is received too late so as not to allow reasonable time to make the necessary arrangements, then the Chairman is not bound to provide the video conferencing facility to the Director.
Yes. It is permitted under Section 173(2) of the Companies Act, 2013 read with Rules made thereunder, for even the Chairman of the meeting to join the meeting through video conferencing. Guidance Note on Secretarial Standards − 1 issued by the ICSI mentions that, in case the Chairman of the Board Meeting is participating through electronic mode, he should, while transacting any interested items of business in which he is interested, vacate the Chair and entrust the conduct of the proceedings in respect of such items to any other non-interested director attending the meeting and should not participate in the meeting in respect of such items

Question-10 Out of nine directors in Moon Ltd. five are Indians and four are foreign nationals based in Indonesia. The Articles of the Company prescribe that quorum for a Board meeting will be at least 5 directors of which at two be foreign nationals. Comment if such a clause in articles is valid under provisions of Companies Act, 2013 ? June 2024 2017 Syllabus (4 marks)

Answer-10 Section 174 of the Companies Act, 2013 deals with quorum for a Board meeting. The section states that quorum for a meeting of Board of directors of a company shall be one third of its total strength or two directors, whichever is higher. Any fraction of a number shall be rounded off as one. Thus, where a company has nine directors quorum for Board meeting shall be higher of three (1/3 of 9) or two, i.e., three directors. Accordingly, three directors shall be quorum in case of Moon Ltd.
However, articles of a company can provide for a higher quorum. The quorum provided under section 174 is the minimum quorum. It is open to the company, by its

articles, to indicate a higher, but not a lower number or proportion as constituting a valid quorum. Amrit Kaur Puri vs Kapurthala Flour Oil & General Mills Co. Pvt Ltd (1984) 56 Com. Cases 194 (P&H).
Hence, the clause in Articles of Moon Ltd. stipulating that quorum for a Board meeting will be at least 5 directors of which two are foreign nationals is valid.

Question-11 The paid-up capital of Srishti Ltd is rupees ten crore. The Board consists of twelve directors. Out of twelve, three positions are vacant. A resolution for calling a general meeting urgently was sent by circulation for approval. There are three interested directors in the resolution. Two directors out of these three interested directors and one other director require the resolution under circulation to be decided at a meeting and have communicated this to the company. Discuss and advise the Board if the resolution can be passed by circulation. June 2024 2017 Syllabus (4 marks)

Answer-11

FACTS:

- Srishti Ltd. has a paid-up capital of ₹10 crore.
- The Board comprises 12 directors, but 3 positions are currently vacant, leaving 9 directors in office.
- A resolution for urgently calling a general meeting was proposed by circulation.
- Out of the 9 directors:
  - 3 are interested directors.
  - 2 interested directors and 1 other director (i.e., 3 directors in total) have requested that the resolution be considered at a Board meeting instead of by circulation.

PROVISIONS:

- As per para 6.1.2 of Secretarial Standard on Board Meeting (SS-1), where not less than one- third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the resolution for consideration at a Meeting of the Board.
- "Total number of Directors" above means the "total strength of the Board" which does not include Directors whose places are vacant. Interested Directors shall not be excluded for the purpose of determining the above one-third of the total number of Directors
- Application to the Present Case:
  - Total strength of the Board = 12 – 3 (vacant) = 9 directors.
  - One-third of 9 = 3 directors.
  - Since 3 directors (which may include interested directors) have requested that the resolution be considered at a meeting, the requirement under SS-1 is fulfilled.

CONCLUSION:

- The total strength of the Board for this purpose is 9 directors.
- Since one-third (i.e., 3 directors) have requested the resolution be considered at a Board meeting, the resolution cannot be passed by circulation.
- Accordingly, the Chairman is required to place the resolution before a Board meeting for discussion and decision.
- Therefore, the Board of Srishti Ltd. cannot proceed with passing the resolution by circulation in this case.

Question-12 Draft a specimen of notice of the Board Meeting considering the provisions of the Companies Act, 2013. June 2024 2022 Syllabus (5 marks)

Answer-12

Notice of the.....(insert sequence number of the

meeting) Board Meeting of..... Pvt Ltd /Ltd having its registered office at.....

To,

Mr. / Ms. (Director Name)
…….(Address)
Dear Sir/Madam,
Pursuant to the requirement of Section 173 (3) of the Companies Act. 2013 read with applicable Secretarial Standards, notice is hereby given that(insert sequence number of
the meeting) meeting of the members of the Board of Directors of the Company will be held on.....(Day of the week), the.....(Date) day of
…….(Month),..... (year) at ..... (time) at .....(address of the venue of the meeting). The agenda of the business to be transacted at the meeting, along with detailed notes thereon and requisite annexures are enclosed herewith.
You are requested to make it convenient to attend the meeting.
Directors may attend the meeting in person or through Video Conferencing / Other Audio Video Means (VC/ OAVM). A Director desirous of attending the meeting through VC/ OAVM should inform well in time so as to make suitable arrangements accordingly.
For.....(Name of the Company)
Sd/
(Name
)
(Designation)
Place:
Date:
Enclosure: Agenda of the business to be transacted at the meeting.

Question-13 Explain the requirement for constitution, composition, and functions of the Stakeholders Relationship Committee as per the provisions of the Companies Act, 2013 and SEBI (LODR) Regulations, 2015. Dec 2024 2022 Syllabus (5 marks)

Answer-13 Stakeholders Relationship Committee
Constitution of Stakeholders Relationship Committee (SRC)
Section 178(5) of the Companies Act, 2013 provides for constitution of the stakeholder's relationship committee. The Board of Directors of a company which consists of more than 1000 shareholders, debenture-holders, deposit- holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee.
As per regulation 20 of the SEBI (LODR) Regulations, 2015, the listed entity shall constitute a Stakeholders Relationship Committee to specifically look into various aspects of interest of shareholders, debenture holders and other security holders

Composition of Stakeholders Relationship Committee

Category	Provisions as per Companies Act, 2013	Provisions as per SEBI (LODR) Regulations, 2015
Number of directors	SRC shall consist of a chairperson and such other members as may be decided by the Board	(i) Minimum 3 directors as members with at least one being an independent director; (ii) In case of a listed entity having outstanding SR equity shares, at least two thirds of the SRC shall comprise of independent directors
Chairperson	Chairperson shall be a non-executive director	Chairperson shall be a non-executive director

Functions of SRC
Section 178(6) of the Companies Act, 2013, the main function of the committee is to consider and resolve the grievances of security holders of the company.
On similar terms Regulation 20 read with Part D of the Schedule II of the SEBI (LODR) Regulations, 2015 provides the role of the committee which inter-alia include the following:

- Resolving the grievances of the security holders of the listed entity including complaints related to transfer/ transmission of shares, non-receipt of annual report, nonreceipt of declared dividends, issue of new/ duplicate certificates, general meetings etc.
- Review of measures taken for effective exercise of voting rights by shareholders.
- Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.
- Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.

Question-14 You are requested to draft sample minutes of a board meeting in which the transaction of a share transfer, along with the usual items of business, was conducted, in accordance with the provisions of the Companies Act, 2013 Dec 2024 2022 Syllabus (5 marks)

Answer-14
Sample Minutes of the Board Meeting
Minutes of the..... Meeting of the Board of Directors of (Company Name) held
on .....(Day).....(Date, Month and Year), at) (Venue) from (Time
of Commencement) PRESENT:
A.B.....Chairman
C.D.....Directors
E.F .....Directors
I.J.....Directors
K.L.....Managing Director
IN ATTENDANCE
X.....Secretary
INVITEES
Y.....Chief Financial Officer

1. Chairman for the Meeting
   Mr/Ms ...was elected as the Chairman for the Meeting.
2. Leave of absence
   Leave of absence from attending the Meeting was granted to Mr. M.N. and Mr. O.P. who expressed their inability to attend the Meeting owing to their preoccupation.
3. Quorum
   The business before the Meeting was taken up after having established that the requisite quorum was present.
4. Minutes of the previous Board Meeting
   The Minutes of the ..... Meeting of the Board of Directors of the

company held on as circulated, were noted by the Board and signed by the Chairman.

5. Minutes of the Committee Meetings
   The Minutes of the ..... Meeting of the ..... Committee held on ....., as circulated, were noted by the Board.
6. Resolution passed by circulation since the last Meeting.
   The following Resolution was passed by circulation on ..... (Date of passing of the Resolution) in terms of the provisions of Section 175 of the Companies Act, 2013.

"RESOLVED THAT .... Mr....., Director dissented on the Resolution.

7. Action Taken Report
   The following action taken was noted by the Board:
   Item No. Item Action Taken _____
8. Register of Contracts
   The Register of Contracts in which Directors are interested under Section 189 of the Companies Act, 2013 and the Rules thereunder was signed by all the Directors present.
9. Notices of Disclosure of Interest of Directors
   (a) The following Notices received from the Directors of the company, notifying their interest in other bodies corporate pursuant to the provisions of Section 184 of the Companies Act, 2013, were read and recorded: Name of the Director Nature of Interest Date of Notice
   (b) A Notice dated received from Mr. LJ. pursuant to the provisions of Section 170 of the Companies Act, 2013, disclosing his shareholding and the shareholding of Mrs. L.J. in the company was read and recorded.
10. Share Transfers Reference was made to Mr .....'s note dated on the subject, as circulated. The Share Transfer Register. of the company was also placed before the Meeting. The Board, after discussion, passed the following Resolution unanimously: "RESOLVED THAT Share Transfers Nos ..... to (Both inclusive) consisting of Equity shares of the company, be approved and the names of the transferees be entered in the Register of Members. RESOLVED FURTHER THAT Mr. X, Secretary, be and is hereby authorised to take necessary action with regard to the aforesaid transfer of shares approved by the Board."
11. Conclusion of the Meeting
12. There being no other business, the Meeting concluded at (Time) with a vote of thanks to the Chair. Date.....
    Place.....

UNIQUE ACADEMY FOR COMMERCE

Chapter 17: Corporate Social Responsibility

Question-1 A company incorporated in 2010, furnished the following information in respect of the financial years (FY) as detailed below:

(₹ in crore)

Item	FY 2019-20	FY 2020-21	Fy 2021-22
Equity share capital	100	120	120
Preference share capital	140	140	140
General reserve	120	130	150
Revaluation reserves	240	240	240
Profit & Loss Account	14	24	34
Securities premium account	200	240	240
Annual turnover	920	1040	400
Net profit	14	24	4

From the above information answer the following referring to the provisions of the Companies Act, 2013 :
(i) Is the company required to constitute CSR Committee? Show the relevant computation/working in support of your answer.
(ii) What must be the minimum spending on CSR in FY 2022-23? Dec 2023 2017 Syllabus (5 marks)

Answer-1 i. According to Section 135(1) of the Companies Act, 2013, the CSR provision is applicable to companies which fulfill any of the following criteria during the immediately preceding financial year:
a. Companies having a net worth of rupees 500 crore or more; or
b. Companies havening turnover of rupees 1000 crore or more; or
c. Companies having a net profit of rupees 5 crore or more.

According to Section 2(57), net worth means the aggregate value of the paid-up share capital and all reserves created out of profits and securities premium account after deducting the aggregate value of accumulated losses, deferred revenue expenditure and miscellaneous expenditure not written off (but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation).

Computation of n[illegible] (Rupees in crore) is tabulated as below:

Item	FY 2019-20	FY 2020-21	FY 2021-22
Equity share capital	100	120	120
Preference sharecapital	140	140	140
General reserve	120	130	150
Revaluation reserves	-	-	-
Profit and loss account	14	24	34
Securities premium account	200	240	240
Net worth	**574**	**654**	**684**
Annual turnover	920	1040	400
Net profits	14	24	4
Eligibility u/s135	Yes	Yes	Yes

As more than one condition viz., net worth or turnover or net profit is getting satisfied from FY 2019-20 onwards, the Board is required to constitute the CSR Committee from FY 2020-21 and onwards to formulate CSR Policy for approval by the Board and for recommending CSR projects.
ii. The minimum CSR spend for FY 2022-23 is two percent of average adjusted net profit for the last three financial years = (2 % of (14+24+4)/3) = Rupees 28 lakhs in FY 2022-2023.

Question-2 You are the Company Secretary of Himachal Chemicals Limited. Pursuant to the applicable provisions of the Companies Act, 2013, draft a board resolution to approve and adopt a new CSR Policy of the Company. Dec 2023 2022 Syllabus (5 marks)

Answer-2 "**RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and such other provisions as may be applicable and based on the recommendation of the CSR Committee, the Board of Directors of Himachal Chemicals Limited (the Company) do and hereby approve a new CSR Policy in suppression of the existing CSR Policy dated.....(May 15,
2021 or any other date) in compliance with the requirements under Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021."
"**RESOLVED FURTHER THAT** the new CSR Policy of the Company be and is hereby approved and adopted by the Board of Directors of the Company and the same be signed by Mr. / Ms.
....., Director for identification purpose."
"**RESOLVED FURTHER THAT** all the Directors of the Company and /or the Company Secretary of the Company and /or the CFO of the Company, be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required to ensure compliance of the CSR Policy including disseminating the contents of revised policy on the website of the Company."

Question-3 Manoj is the youngest member of CSR committee of Puzzle Garments Ltd. He understands that the CSR Committee shall formulate and recommend to the Board an annual action plan pursuant to its CSR policy and the policy shall include certain matters. Manoj discussed the issue with the chairman of the CSR committee and they have approached you, practising Company Secretary for your advice. Draft a suitable note for them. June 2024 2017 Syllabus (5 marks)

Answer-3 As per Rule 5(2) of the Corporate Social Responsibility Policy Rules, 2014 the CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:
(a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
(b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;
(c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
(d) monitoring and reporting mechanism for the projects or programmes; and
(e) details of need and impact assessment, if any, for the projects undertaken by the

company. However, the Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

Question-4 Modest Ltd. has fallen within the purview of Corporate Social Responsibility norms recently. The Chief Executive Officer of the company wants to know from you, practising Company Secretary, how the following be dealt with in respect thereof:

(i) Surplus arising out of the CSR activities:
(ii) Set off of excess CSR spends

(iii) Can CSR be made not applicable to any company? Discuss with reference to the provisions of Companies Act, 2013. June 2024 2017 Syllabus (5 marks)

Answer-4 (i) Surplus arising out of the CSR activities Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the unspent CSR account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII of the Companies Act, 2013 (the Act) within a period of six months of the expiry of the financial year.

(ii) Excess CSR spends may be set off

Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135 of the Companies Act, 2013 read with rule 7 of Companies (Corporate Social Responsibility Policy) Rules, 2014, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that:

- the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.
- the Board of the company shall pass a resolution to that effect.

(iv) In case of specified IFSC public / private company — section 135 shall not apply for a period of five years from the commencement of business as per notification dated 4th January, 2017. Thus, CSR can be made not applicable to these Companies

Question-5 Draft a sample Board resolution for the approval and adoption of a new CSR policy June 2024 2022 Syllabus (3 marks)

Answer-5 Sample Board Resolution to approve and adopt a new CSR Policy

"**RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and such other provisions as may be applicable and based on the recommendation of the CSR Committee, the Board of Directors of the company do and hereby approve a new CSR Policy in supersession of the existing CSR Policy dated .....in compliance with the requirements under Companies
(Corporate Social Responsibility Policy) Amendment Rules, 2021.

RESOLVED FURTHER THAT the new CSR Policy be and is hereby approved and signed by Mr./ Ms.__Director.

RESOLVED FURTHER THAT the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required to ensure compliance of the CSR Policy including disseminating the contents of revised policy on the website of the company."

Question-6

Amorphous Chemicals Limited, an unlisted public company, incorporated on 1st April, 2022.
Budgeted Balance Sheet as at 31st March

Rs. In Crores

Item	FY 2022-2023	FY 2023-24
Paid-up Equity Share Capital	300	300
Paid-up preference share capital	200	200
Security Premium	150	150
General Reserve	300	350
Revaluation Reserve	300	300
Profit and Loss Account (Credit Balance)	150	200

81 of

Profit after Tax	200	250
Turnover	1500	1600
Tax Rate	25%	25%
Dividend from Investments in companies in India	5	
Profit from investment made in foreign subsidiaries		10

With reference to provisions of the Companies Act, 2013, decide the applicability of CSR provisions and calculate the amount, if any, that needs to be spent on CSR during the FY 2024-25. Draw suitable assumptions and show working. *(5 Marks)*

Answer-6 According to Section 135(1) of Companies Act, 2013 read with the Companies (CSR Rules), 2014, Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

As per section 135(5) the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

The unlisted public company was incorporated in the year 2022-23. It satisfies all the conditions on net worth (minimum Rs. 500 crore), turnover (minimum Rs. 1000 crore) or net profit (minimum Rs. 5 crore) in a year. Hence, the company needs to spend at least 2% of its adjusted net profit calculated as per Section 198 of the Companies Act, 2013 from the year 2023-24.

According to Companies (CSR Policy) amendment Act, 2021 dated 22/01/2021, expenditure incurred on specific activities that are carried out in India only will qualify as CSR expenditure. According to Rule 2(1) of CSR Rules, in computation of net profit, dividend income received from investments in another Indian company or profit made by the company from its overseas branches will be excluded.

According to Section 198(5) of the Act, in computing adjusted net profit, inter alia, income tax and supertax payable by the company under Income Tax Act,1961 shall not be deducted from the net profits. That means the profits before tax should be a starting poi

As other inf profit is not given, t eceived from Indian

Rupees in crore

Item	FY 2022-23	FY 2023-24
Net profit after tax	200	250
Add back tax already paid @25% on gross profit (or @33 1/3 % on net profit)	67	83
Profit before tax	267	333
Less: dividend from investments and profit from foreign branches	-5	-10
Adjusted net profit (ANP)	262	323
Amount to be spent on CSR @2% on average ANP during FY 2024-25		5.85

Question-7 Explain the provisions of Rule 7 of the CSR Rules, 2014, under the Companies Act, 2013, concerning :

(i) the CSR expenditure,
(ii) the ceiling on administrative overheads,
(iii) the treatment of surplus arising from CSR activities,
(iv) the handling of excess CSR spending, and
(v) the acquisition of capital assets. Dec 2024 2022 Syllabus (5 marks)

Answer-7

(i) CSR Expenditure The Board of every eligible company u/s 135 (5) of the Companies Act, 2013 shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy, this amount will be CSR expenditure.

The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.

(ii) Administrative Overheads

As per rule 7(1) of the Companies (Corporate Social Responsibility) Rules, 2014-The board shall ensure that the administrative overheads shall not exceed 5% of total CSR expenditure of the company for the financial year.

(iii) Surplus arising out of the CSR Activities

As per rule 7(2) of the Companies (Corporate Social Responsibility) Rules, 2014, any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

(iv) Excess CSR spends may be set off As per rule 7(3) of the Companies (Corporate Social Responsibility) Rules, 2014-Where a Company spent on CSR in excess of the requirement (i.e. 2%), such excess amount may be set-off against the requirement of the CSR Spending u/s 135(5) upto the immediate succeeding 3 financial years subject to the conditions that:

- The excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule;
- The Board of the company shall pass a resolution to that effect.

(v) Acquisition of Capital Assets

As per rule 7(4) of the Companies (Corporate Social Responsibility) Rules, 2014-The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by −

- Section 8 Company, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number;
- beneficiaries of the said CSR project, in the form of self-help groups. collectives, entities;
- a public authority.

Question-8 Quick Money Limited attracts the provisions of section 135 of the Companies Act, 2013 and it has minimum average obligation to spend Corporate Social Responsibility (CSR) amount of ` 15 crore during each of the preceding five

years. In this connection, the Board of Directors of the company needs your expert views on the following matters:
(i) What is the meaning of "impact assessment"?
(ii) Whether impact assessment is required to be taken by all the companies?

(iii)Who can conduct impact assessment?

Answer-8 Rule 8(3) of the Companies (Corporate Social Responsibilities Policy), 2014 provides the class of companies that are required conduct an impact assessment.
Every company having average CSR obligation of ten crore rupees or more in pursuance of section 135(5) of the Companies Act, 2013, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.
The above-mentioned companies may undertake impact assessment, through an independent agency.

Alternate Answer

(i) Meaning of Impact Assessment:

The impact assessment is an exercise to assess the social, economic and environmental impact of a particular CSR project. Impact assessment intends to evaluate "social, economic and environmental return on investment". It is the exercise of taking a retroactive view of the Corporate Social Responsibility (CSR) activities completed by the entity and assess the effects of these activities on various stakeholders like employees, customers, communities and the environment. Impact assessment is seemingly another step to encourage companies to make considered decisions before deploying CSR amounts and assess the impacts of their investments to capture the impact being generated by them. This shall not only serve as feedback for companies to plan and better allocate resources, but shall also deepen the impact of CSR.

(ii) Whether the impact assessment is to be taken by all Companies?

Since impact assessment is cost-intensive and time consuming, the idea is to obligate only certain classes of companies which have large amount of spending and have completed their large CSR projects. Accordingly, Rule 8(3) of the Companies (Corporate Social Responsibilities Policy), 2014 requires the following class of companies to conduct an impact assessment:
Every company having average CSR obligation of ` 10 crore or more in the three immediately preceding financial years of their CSR projects having outlays of 1 crore rupees or more, and which have been completed not less than 1 year before undertaking impact assessment.

(iii) Who can conduct an impact assessment?

The impact assessment shall be conducted by an independent agency.

UNIQUE ACADEMY FOR COMMERCE

Chapter 18: Annual Report

Question-1 The Chairman of a listed company wants to know from you the details required to be entered in the register of contracts in which a director is interested and the requirement of the period of maintaining the said register. Explain with reference to the provisions of the Companies Act, 2013. Dec 2023 2017 Syllabus (3 marks)

Answer-1 i. Section 189(1) of the Companies Act, 2013 read with Rule 16 of the Companies (Meeting of Board and its Powers) Rules, 2014, requires that every company shall keep a register giving separate details of contracts or arrangements referred to in Section 184(2) and under section 188 in Form MBP-4.

ii. The register should contain details of:

a. company or companies or bodies corporate, firms or other association of individuals, in which any director has any concern or interest, as mentioned under sub-section (1) of section 184: However, the particulars of the company or companies or bodies corporate in which a director himself together with any other director holds two percent. or less of the paid-up share capital would not be required to be entered in the register;
b. contracts or arrangements with a body corporate or firm or other entity as mentioned under sub-section (2) of section 184, in which any director is, directly or indirectly, concerned or interested; and
c. contracts or arrangements with a related party with respect to transactions to which section 188 applies. Such register or registers shall be placed before the next meeting of the Board and signed by all the Directors present at the meeting.

iii. The register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.

Question-2 Agro Food Ltd. is a listed company under Companies Act, 2013. Sumit is a shareholder of the company who holds 101 shares of 100 each. The email id of Sumit is not registered with the company but registered with the depository of the company. Company held its annual general meeting on 15th September, 2023 as per the provisions of the Companies Act, 2013. The company sent a soft copy of annual report on 20th September, 2023, through email to all its shareholders whose email id are registered with the company excluding Sumit on the contention that email id of Sumit is not registered with the company. Examine the contention of the company with respect to the manner of sending annual report to the shareholders referring to the provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Dec 2023 2017 Syllabus (3 marks)

Answer-2

FACTS:

- Agro Food Ltd. is a listed company under the Companies Act, 2013.
- Sumit, a shareholder of the company, holds 101 equity shares of ₹100 each.
- Sumit's email ID is not registered with the company, but it is registered with the depository.
- The company held its Annual General Meeting (AGM) on 15th September, 2023.

- The soft copy of the annual report was sent on 20th September, 2023, to shareholders whose email IDs were registered with the company, excluding Sumit, on the ground that his email was not registered with the company.

PROVISIONS:

According the Regulation 36 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [SEBI (LODR) Regulations], the listed company shall send the annual report in the following manner to the shareholders:

a. Soft copies of full annual report to all those shareholders(s) who have registered their registered their email address(es) either with the listed company or with any depository;
b. Hard copy of the statement containing the silent features of all the documents, as prescribed in the Section 136 of Companies Act, 2013 or rules made thereunder to those shareholders(s) who have not so registered;
c. Hard copies of full annual reports to those shareholders, who request for the same.

The listed entity shall send annual report to the holders of securities, not less than twenty- one days before the annual general meeting.

Application to the Present Case:

- Agro Food Ltd., sent annual report after annual general meeting concluded while it is required to be sent not less than 21 days before the annual general meeting i.e., on or before 24th August, 2023.
- Further, company did not send annual report to Sumit, while it is required to be sent to all shareholders whose email id is registered with the company or its depository.
- Sending the annual report after the AGM and not sending it to a shareholder who has a registered email with the depository are both violations of Regulation 36.

CONCLUSION:

- Agro Food Ltd. has not complied with Regulation 36 of the SEBI (LODR) Regulations, 2015.
- The company was required to:
  - Send the annual report on or before 24th August, 2023 (i.e., at least 21 days prior to the AGM).
  - Send a soft copy of the annual report to Sumit, since his email ID was registered with the depository, even if not with the company.
- Therefore, the contention of the company is incorrect, and its actions are not in line with the SEBI (LODR) Regulations.

Question-3 Strong Ltd. was incorporated on l0th March, 20l5 as an Indian company having registered office at Indore with six directors. It deals in manufacture of fertilizers. It has a foreign subsidiary incorporated in Korea since 1st April, 2023. A, accountant of the foreign subsidiary has informed Sumana, Manager (Accounts) of Strong Ltd. that audit is not necessary as per their local laws in Korea. Strong Ltd. decides to get the accounts of the subsidiary company audited by its own auditor, Star & Co., Chartered Accountants and then file the consolidated accounts with the Registrar of Companies for year ended 31st March. 2024. Discuss the validity of action of Strong Ltd with reference to the provisions of Companies Act, 2013. June 2024 2017 Syllabus (5 marks)

Answer-3

FACTS:

- Strong Ltd., an Indian company incorporated on 10th March 2015, has its registered office in Indore and is engaged in the manufacture of fertilizers.
- The company has six directors.

- It has a foreign subsidiary incorporated in Korea since 1st April 2023.
- The accountant of the Korean subsidiary informed Sumana, Manager (Accounts) of Strong Ltd., that audit is not mandatory as per local Korean laws.
- Despite this, Strong Ltd. decides to get the accounts of its Korean subsidiary audited by its own statutory auditor, Star & Co., Chartered Accountants, in order to file consolidated

financial statements with the Registrar of Companies (RoC) for the financial year ended 31st March 2024.

PROVISIONS:

- Fourth proviso to section 137(1) of the Companies Act, 2013 requires that a company shall attach along with its financial statements to be filed with the Registrar, the accounts of its subsidiary(ies) which have been incorporated outside India and which have not established their place of business in India.
- Ministry of Corporate Affairs vide its General circular 11/2015 dated 21 July, 2015 has clarified the issue raised in question.
- Clarification has been sought on: Whether a company covered under above provisions can place/file unaudited accounts of a foreign subsidiary if the audit of such foreign subsidiary is not a mandatory legal requirement in the country where such foreign subsidiary has been incorporated and such audit has not been conducted. and: The matter has been examined in the Ministry and it is clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding / parent Indian company may place / file such unaudited accounts to comply with requirements of Section 136(1) and 137(1) as applicable. These, however, would need to be translated in English if the original accounts are not in English Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed / filed along with such accounts.

In view of the above, if Strong Ltd. decides to get the accounts of the subsidiary company
incorporated in Korea audited by its own auditor, it can do so provided:

a) The accounts of the subsidiary company abroad are translated in English, if the original accounts are not in English; and

b) the format of accounts of foreign subsidiary should be, as far as possible, in accordance with requirements under Companies Act, 2013.

CONCLUSION:

- The decision of Strong Ltd. to get the accounts of its Korean subsidiary audited by its own auditor (Star & Co., Chartered Accountants) is valid under the Companies Act, 2013.
- While the Korean law does not mandate an audit, the Companies Act permits Strong Ltd. to voluntarily audit the subsidiary's accounts to ensure compliance with Indian regulatory requirements.
- However, Strong Ltd. must also ensure that:
  - The subsidiary's accounts are translated into English, if not originally in English.
  - The accounts are prepared in a format aligned, as far as possible, with Indian requirements, or a statement explaining deviations is submitted.
- Therefore, Strong Ltd.'s action is legally valid and compliant with the intent and requirements of Section 137(1) of the Companies Act, 2013, and the MCA Circular.

Question-4 (i) Prashant has joined the Board of Pragati Manufacturers Ltd. as a Nominee director on 15th March, 2024. You are the Secretary of the company and Prashant has connected with you to advise him the disclosures pertaining to credit rating of securities in Board's Report for year ended 31st March, 2024 as a good governance practice. Prepare a note to the Nominee director on the disclosures.

(ii) Comment who will certify the annual return of Bright Ltd., an unlisted company having a turnover

of Rs. 60 crore with four directors, Chief Executive Officer, President (Finance) and Company Secretary. June 2024 2017 Syllabus (5 marks)

Answer-4 (i) Secretarial Standard 4 (SS-4) pertaining to Report of the board of directors indicates that as a good governance practice the disclosure on credit rating should also be included in the Board's Report. The disclosure shall include the following:
(a) credit rating obtained in respect of various securities;
(b) name of the credit rating agency;
(c) date on which the credit rating was obtained;
(d) revision in the credit rating;
(e) reason provided by the rating agency for a downward revision, if any.

(ii) Under section 92(2) of the Companies Act, 2013 read with Rule 11(2) of the Companies (Management and Administration) Rules, 2014 the annual return of a listed company or of a company having a paid- up share capital of `10 crore or more or turnover of `50 crore or more shall be certified by a Company Secretary in practice in Form MGT-8. Accordingly, annual return of Bright Ltd., an unlisted company having a turnover of `60 crore shall be certified by none of the persons given in question but by a practicing Company Secretary.

Question-5 Draft a specimen Board resolution for approval of Board's Report. June 2024 2017 Syllabus (2 marks)

Answer-5 Specimen Board Resolution for approval of the Board's Report

"**RESOLVED THAT** the Boards' Report to be sent to the Shareholders of the company for the year ended 31st March..... prepared in accordance with the provisions of Section 134 of the Companies Act, 2013 together with all the Annexures thereto (as per draft placed before the Board and initialed by the Chairman for identification purposes) be and is hereby approved and the same be signed by Shri..... Chairman of the company, or in his absence, by Shri..... Managing Director and Shri .....Director for and on behalf of the Board of Directors of
the company."

Question-6 Explain about the Directors' Responsibility Statement covering the aspect of its authentication under the provisions of the Companies Act, 2013? Dec 2024 2017 Syllabus (3 marks)

Answer-6 According to Sec 134(5) of the Companies Act, 2013, the Directors' Responsibility Statement shall, state that
a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

d) he directors had prepared the annual accounts on a going concern basis; and
e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
f) the directors had devised proper systems to ensure compliance with the provisions of all

applicable laws and that such systems were adequate and operating effectively.

The Directors' Responsibility Statement is an integral part of Board Report u/s 134 of the Act. The Board Report is approved by the Board of directors of the company and signed by the chairman of the company if so, authorized by the Board or by two directors one of whom shall be the Managing Director. Thus, after the Board's report is approved and signed, the Directors Responsibility Statement stands authenticated by the Board and no separate authentication thereof is required.

Question-7 Explain the concept of Annual Report and the Report on Annual General Meeting with reference to the provisions of the Companies Act, 2013. Do you think that these two terms are synonymous? Dec 2024 2017 Syllabus (4 marks)

Answer-7 Every listed company is mandated to prepare a Report on each Annual General Meeting (AGM) confirming, inter alia, that the AGM was convened, held and conducted as per the provisions of Companies Act, 2013.
Annual report generally contains the Notice of the AGM and attachments sent to the members for calling the AGM, the Directors' Report, Auditor's Report, Annual Financial Statements etc. Annual report generally contains the Notice of the AGM, the Directors' Report, Auditor's Report, Annual Financial Statements etc.
The Annual Report is sent to the members at least 21 clear days before the AGM. Report on AGM is prepared as per the requirements of Section 121 of the Companies Act, 2013 read with Rule 31 of Companies (Management and Administration) Rules, 2014.
The report on AGM is filed with the ROC in form MGT-15 within 30 days of the conclusion of the AGM. The Report on AGM is prepared by listed companies. The report contains, inter alia, the date and venue of the AGM, chairman appointment, presence of quorum, business transacted at the AGM etc. The Report on AGM shall be signed by the Chairman of the AGM or by two directors including the Managing Director and also the company secretary of the public listed company. Hence, these two terms are not synonymous. They are different in their object, scope and contents.

UNIQUE ACADEMY FOR COMMERCE

Chapter 19: Key managerial personnel and their remuneration

Question-1 ‘‘The provisions of appointment of Company Secretary in United Kingdom are same as in India under the Companies Act, 2013’’. Comment. Dec 2023 2017 Syllabus (3 marks)

Answer-1 According to Section 203 of Companies Act, 2013 read with rule 8 and 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every company with a paid- up capital of at least Rs. Ten Crore shall have, inter alia, a whole time company secretary who is a member of ICSI as per Sec 2(1) (c) of Company Secretaries Act, 1980.
Thus, only a qualified company secretary can be appointed as the company secretary of a company in India. On the other hand Section 270, 271 and 273 of UK Companies Act, 2006, govern the provisions pertaining to appointment and qualifications of company secretary as below:
A Private Company is not required to have a Secretary. However, a public company must have a Secretary. It is the duty of the Directors of a public company to take all reasonable steps to secure that the Secretary (or each Joint Secretary) of the company–

a. is a person who appears to them to have the requisite knowledge and experience to discharge the functions of Secretary of the company, and
b. has one or more of the following qualifications.

The qualifications are–
(a) that he has held the office of Secretary of a public company for at least three of the five years immediately preceding his appointment as Secretary;
(b) that he is a member of any of the bodies specified as below–
   a. the Institute of Chartered Accountants in England and Wales;
   b. the Institute of Chartered Accountants of Scotland;
   c. the Association of Chartered Certified Accountants;
   d. the Institute of Chartered Accountants in Ireland;
   e. the Institute of Chartered Secretaries and Administrators;
   f. the Chartered Institute of Management Accountants;
   g. the Chartered Institute of Public Finance and Accountancy.
(c) that he is a barrister, advocate or solicitor called or admitted in any part of the United Kingdom;
(d) that he is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the Directors to be capable of discharging the functions of Secretary of the company.
Thus, the provisions of appointment of Company Secretary in United Kingdom are not exactly same as in India under the Companies Act, 2013.

Question-2 Amit, who has vast experience in the area of managing a steel manufacturing company for more than 20 years and he has a qualification of MBA from the Indian Institute of Management, Ahmedabad. He is also a qualified Chartered Accountant. PQR Private Limited, engaged in the business of steel manufacturing, appointed Amit as Managing Director for life time, The Articles of Association of the Company provides for appointment of managing director for life time. Examine, in the

light of the provisions of the Companies Act, 20l3, whether such appointment is valid? What would be your answer, if the company is a Government company in which he is appointed for the period till he retires from the Government service pursuant to such provision in the Articles of Association of the company? Dec 2023 2017 Syllabus (5 marks)

Answer-2

FACTS:

- Amit is an experienced professional with:
  - Over 20 years' experience in managing a steel manufacturing company.
  - Academic qualifications: MBA from IIM Ahmedabad and Chartered Accountant.
- PQR Private Limited, a private company engaged in steel manufacturing, appoints Amit as Managing Director (MD) for life.
- The Articles of Association (AoA) of the company provide for appointment of MD for life.
- A variation of the scenario is also considered, where the company is a Government company, and Amit is appointed as MD till his retirement from Government service, in accordance with the AoA.

PROVISIONS:

- Section 196 of the Companies Act, 2013 provides that no company shall appoint or employ at the same time a Managing Director and a Manager. Further, a company shall not appoint or reappoint any person as its Managing Director, Whole Time Director or Manager for a term exceeding five years at a time and no reappointment shall be made earlier than one year before the expiry of his term. Section 196(2) relates to term of managing director not to exceed five years. Section 196(2) applicable to all companies whether public or private, but is not applicable to Government Company.

- If the Company is a Government Company, then section 196(2) is not applicable vide Notification No. GSR 463(E) dated 05-06-2015. In such a case, his appointment can be made for a period till he retires from Government service.

- Section 6(2) of the Companies Act, 2013 states that any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

CONCLUSION:

With reference to above provisions,

- In the case of PQR Private Limited (a private company):
  - The appointment of Amit as Managing Director for life time is invalid.
  - This is because it violates Section 196(2), which limits the term to five years at a time.
  - Even though the Articles of Association allow for a lifetime appointment, such a clause is repugnant to the Companies Act and is therefore void under Section 6(2).
- In the case where PQR becomes a Government company:
  - Section 196(2) does not apply, as per the government notification.
  - Hence, the company may validly appoint Amit as MD till his retirement from Government service, if such provision exists in the Articles of Association.
  - In this case, the appointment is valid.

Question-3 You are a freshly qualified Company Secretary. During an interview for the position of Company Secretary in a listed company the Managing Director has

asked you:

(i) Functions of a Secretary in a listed company as compliance officer;

(ii) Can a secretary be punished in respect of offences under Companies Act, 2013? Answer to the Managing Director. June 2024 2022 Syllabus (4 marks)

Answer-3 i) As per clause (1) of Regulation 6 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a listed company is required to appoint the company secretary to act as 'Compliance Officer', who will be responsible for the following

a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities.
c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity.
d) monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.

ii) Company Secretary has been defined as 'Officer who is in default' under Section 2(60) of the Companies Act, 2013 along with Managing Director, Manager and Whole time Director etc. Thus, he can be punished in respect of offences under Companies Act, 2013. He may be held liable as Key Managerial Personnel also under various provisions of the Act.

Question-4 You are the CFO of XYZ Textiles Limited, a listed company in Tamil Nadu. Pursuant to the applicable provisions of the Companies Act, 2013 and taking into account the requirement of SEBI Regulations, draft a board resolution for appointment of a whole-time company secretary of the company. June 2024 2022 Syllabus (5 marks)

Answer-4 "**RESOLVED THAT** Pursuant to the provision of section 203 (1) of the Companies Act, 2013 read with rule 8 and 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 and any other applicable provisions of the Act and Rules framed thereunder, including any amendments thereto or reenactment thereof from time to time, Mr. _____Membership No._____of the Institute of Company Secretaries of India (ICSI) be and is hereby appointed as the "Company Secretary" of XYZ Textiles Limited (the Company) on the terms and condition including the terms of remuneration as per appointment letter placed before the meeting, and as recommended by the nomination and remuneration committee."

"**RESOLVED FURTHER THAT** pursuant to regulation 6 and 30 read with clause 7 of para A of Part A of Schedule III of SEBI (Listing Obligation And Disclosure Requirement) Regulation 2015, Mr._____ be and is hereby designated and appointed as the "Compliance Officer" of the company and authorised to make all the compliances as may be applicable to the company under the SEBI (Listing Obligation And Disclosure Requirement) Regulation 2015, various other SEBI Regulation, Securities Contract Regulation Act 1956, Industrial and labour laws and other laws as may be applicable to the Company from time to time."

"**RESOLVED FURTHER THAT** the company secretary and compliance officer be and is hereby authorised to sign various documents and file forms/ returns on behalf of the company as may be necessary and to do all such acts, deeds. things, and matters incidental there to give effect to the aforesaid resolution.

"**RESOLVED FURTHER THAT** Mr._____, Managing Director of the Company be and is hereby authorised to sign and submit necessary forms / returns for the appointment of company secretary with the Registrar of Companies, _____, and also be authorised to intimate the same to the appropriate authorities / regulatory bodies and to do all such acts and deeds as may be necessary in this regard."

Question-5 Sunil, a shareholder (holding 15% shares) of JJ Chemicals Limited (the company) and other shareholders have lost confidence in the managing director (MD) of the company who is a director not liable to retire by rotation and was re-appointed as managing director for 5 years
w.e.f. 1st April, 2024 in the last annual general meeting of the company held in 2023. Sunil wants to know from you the procedure/steps to be taken by him and the company in this behalf. June 2024 2022 Syllabus (5 marks)

Answer-5 Removal of a non-rotational managing director is possible, since section 169 of the Companies Act, 2013 empowers the members to remove any director, whether he is rotational or non- rotational director, or managing director, whole time director or a non-executive director.

Procedure/Steps to be taken by Mr. Sunil

Mr. Sunil shall have to give a special notice to the company in accordance with the provisions of Section 115 of the Companies Act, 2013. In the special notice. Mr. Sunil shall propose a resolution for removal of the managing director. The special notice must be - (i) given to the company not earlier than 3 months before the date of the general meeting but at least 14 days before the general meeting (excluding the day on which such notice is given and the day of the general meeting); (ii) signed by member(s) holding not less than 1 % of total voting power or member(s) holding shares on which an aggregate sum of not less than five lakh rupees has been paid up on the date of the notice.

Procedure/Steps to be taken by the company
(a) On receipt of notice by the company: The Company shall immediately after the receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings. (b) Publication of notice: Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated. Such notice shall also be posted on the website, if any, of the Company. Such notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.
(c) On receipt of special notice, the company shall send a copy to the managing director concerned.
(d) The concerned Managing director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.
(e) Managing Director concerned if make representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,
(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the concerned director may without prejudice to his right to be heard orally require that the representation shall be read

out at the meeting.
(f)The general meeting shall be held.
(g)The managing director shall have a right to be heard at the meeting. The right to make an oral representation is in addition to written representation.

Question-6

(i) The Board of Directors of the company presents the following financial data extracted from the company's financial statements as at 31st March, 2024 :

Particulars	₹ (Cr.)
Authorised equity share capital	240
Paid-up equity share capital	40
Debenture redemption reserve	40
Securities Premium Account	80
Revaluation Reserve	80
Profit and Loss (Loss)	(40)

Due to losses in the financial year 2023-24, the Board of Directors is exploring the option to pay the remuneration to the managing director of the company, not more than the remuneration that law permits for which the managing director agreed. You being a company secretary advise the Board of Directors the maximum remuneration payable to the managing director in case of losses or inadequacy of profits to the company without seeking approval of any other authorities.

(5 marks)

Answer-6 Section 197 read with Section 198 and Schedule V of the Companies Act, 2013 deals with the provisions related to managerial remuneration. As per Section 197 (3) of the Act, notwithstanding anything contained in sub-sections197 (1) and 197(2), but subject to the provisions of Schedule V, if in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole time director or manager, or any other non-executive director, including an independent director by way of remuneration any sum exclusive of any fees payable to directors under 197 (5) hereunder except in accordance with the provisions of Schedule V whereunder slab- wise limit on managerial remuneration on the basis of the effective capital of the company has been stipulated. Computation of Effective Capital of Company for determining managerial remuneration:

Particulars	Rs. (Cr.)
Paid-up equity share capital	40
Debenture redemption reserve	40
Securities Premium Account	80
Revaluation Reserve (excluded)	----
Profit and Loss (Loss)	(40)
Effective Capital	**120**

As per the limit stipulated if the effective capital is INR 100 crores and above but less than INR
250 Crores the maximum yearly remuneration payable to the managerial persons shall not exceed INR 120 Lakhs. In the given scenario, the effective capital of the company is INR 120 crores. Hence, the company can pay renumeration to the managing director maximum up-to Rs. 120 lakhs without seeking approval of

shareholders by passing a special resolution.

Question-7 Iceberg Cement (India) Limited, a top 1000 listed public company (the company), is a

subsidiary of a global conglomerate of Iceberg Cement Plc. The group has a common policy of not declaring any dividend on its equity shares. The CFO of the company says that, as the global conglomerate has a zero-dividend policy, its Indian subsidiary also need not disclose its dividend distribution policy in its annual report or on its website. Assess the validity of the contention of CFO under the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Also, state, whether the company is required to comply with the disclosure requirement, if it is a company other than top 1000 listed company. Dec 2024 2017 Syllabus (3 marks)

Answer-7

FACTS:

- Iceberg Cement (India) Limited is a top 1000 listed public company in India.
- It is a subsidiary of a global conglomerate, Iceberg Cement Plc, which follows a zero- dividend policy group-wide.
- The CFO of the Indian subsidiary has stated that due to the global group's zero-dividend policy, the Indian company need not disclose its dividend distribution policy in the annual report or on its website.
- A question arises regarding the validity of this view under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR).

PROVISIONS:

With effect from 08/07/2016, according to Regulation 43A of SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2015 (LODR), top 1000 listed companies shall formulate a dividend distribution policy which shall be disclosed on the website of the listed company and also a web-link shall be provided in its annual reports. The company has to disclose both on its website and in its annual reports its dividend distribution policy. Non- payment of dividend on equity shares as a matter of policy is also a dividend distribution policy.

CONCLUSION:

- The CFO's contention is incorrect under Regulation 43A of SEBI LODR.
- Since Iceberg Cement (India) Limited is a top 1000 listed company, it is mandatorily required to:
    - Formulate a dividend distribution policy — even if that policy is to not declare any dividend.
    - Disclose the policy on its website, and
    - Provide a web-link in its annual report.
- The fact that the global group has a zero-dividend policy does not exempt the Indian listed subsidiary from complying with SEBI disclosure requirements.
- For companies outside the top 1000 listed entities, such disclosure is voluntary and not mandatory.

Question-8 Explain the concept of statutory books and the statutory registers and records under the provisions of the Companies Act, 2013. Who will authenticate the statutory registers in the absence of Company Secretary in the employment of a company? Dec 2024 2017 Syllabus (3 marks)

Answer-8 The Companies Act, 2013, stipulates that every company must maintain and keep books, registers and copies of Returns, documents at its Registered Office. These books are known as Statutory Books.
Statutory books are official records kept by a company pertaining to all legal and statutory

matters.

They are also known as statutory registers and records. A few examples of Statutory Registers are Register of Members, Register of Deposits, Register of Charges, Register of Significant Beneficial Owners etc. Requirement to maintain the Statutory Registers and records arises due to the various applicable provisions of the Companies Act, 2013 & rules framed there under. Non- compliance of these sections and rules attracts huge penalties on the companies and on officers in default.
The statutory registers are maintained at the registered office of the company or at such other place as the Board may decide. Entries in the registers shall be authenticated by the company secretary of the company, if any or by any other person authorized by the Board for this purpose.

Question-9 Varahi Granite Manufacturing Limited has decided to appoint Rahul as its Managing Director for a period of 5 years with effect from 1st May, 2024. Rahul is an MBA graduate from IIM Mumbai having a Valid DIN and fulfils all the conditions as specified under Schedule V to the Companies Act, 2013.
The terms of appointment are as under:

(i) Salary: Rs. 2 lakhs per month
(ii) Commission, as may be decided by the Board of Directors of the company from time to time.
(iii) Perquisites:
  (1) Free housing accommodation
  (2) Medical reimbursement up to 15,000 per month,
  (3) Personal Accident Insurance: Rs.5 lakh.
(iv) Gratuity, and Provident Fund as per Company's policy.

You are requested to draft a board resolution for the appointment of Rahul as a Managing Director considering the above terms and conditions under the provisions of the Companies Act, 2013. Dec 2024 2017 Syllabus (5 marks)

Answer-9 Draft Board Resolution for appointment of Managing Director:
"RESOLVED THAT pursuant to Section 196 read with read with Schedule V and other applicable provisions of Companies Act, 2013, consent of Board of Directors of the Company be and is hereby accorded to the appoint Mr. Rahul, a MBA graduate from IIM Mumbai having valid DIN
___, as the Managing Director of the company for a period of 5 years effective from 1st May, 2024 subject to approval by a resolution of shareholders in a general meeting.
RESOLVED FURTHER THAT Mr. Rahul shall be paid remuneration as follows:
(i) Salary of Rupees 2 Lakh per month.
(ii) Commission, as may be decided by the Board of Directors of the company from time to time.
(iii) Perquisites: Free Housing Accommodation facility, Medical reimbursement up to 15,000 per month, Personal Accident Insurance of 5 Lakh
(iv) Gratuity, Provident Fund etc. as per the policy of the company.
RESOLVED FURTHER THAT in the event of loss or inadequacy of profits, the salary payable to him shall be subject to the limits specified in Schedule V.
RESOLVED FURTHER THAT the Company Secretary of the company be and is hereby authorized to file necessary forms and returns with the Registrar of Companies in respect of the above appointment."

Question-10 (c) The following information is given :

Rs. In Crores

Item	BVM International Ltd	ABC Private Limited	Super Grip Tyres Limited
Equity Share Capital	8	12	16
Preference Share Capital	5	0	0
Security Premium	24	12	32
Long term Loans from Banks	40	25	50
Short term loans from Banks	30	10	20
Profit and Loss Account	118	42	25
Total Revenue for FY 2023-24	75	24	65
Status	Listed	Private	Unlisted

Based on the above information and referring to the provisions of the Companies Act, 2013 determine, which companies are mandatorily required to appoint a wholetime company secretary and file the return with the Registrar of Companies under the provisions of the Companies Act, 2013. Also, state the appointing authority of the company secretary. Additionally specify, whether the company secretary of Super Grip Tyres Limited can simultaneously act as a company secretary of BVM International Limited, if it is an associate company and not the holding or subsidiary company of Super Grip Tyres Limited.

(5 marks)

Answer-10

FACTS:

- BVM International Limited is a listed company.
- ABC (Private) Limited is a private company.
- Super Grip Tyres Limited is an unlisted public company with a paid-up share capital exceeding ₹10 crore.
- All three companies are considering or have made appointments of Company Secretaries.
- It is proposed to appoint the Company Secretary of Super Grip Tyres Limited as the Company Secretary of its associate company, BVM International Limited, simultaneously.

PROVISIONS:

1. Applicability of Appointment Requirements:

According to Companies Act, 2013 read with Rule 8 and Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 every listed company and every other company with a paid-up capital of Rupees ten crore or more shall appoint a company secretary in the whole-time employment of the company.

2. **Filing Requirements with ROC:**

All the companies are required to file a return on appointment of company secretary who is a Key Managerial Person under section 2(51) of the Act with the Registrar of Companies (ROC) in Form DIR-12. Public companies are also required to file Form MGT-14 with the ROC.

Hence, BVM International Limited, being the listed company, ABC (Private) Limited

and Super Grip Tyres Limited, the unlisted public company whose paid up share capital is more than 10 crore rupees are mandatorily required to appoint a whole-time company secretary and file Form- DIR 12. Additionally, all companies except ABC (Private) Limited, are required to file Form MGT-

14 with the RoC. The appointing authority for company secretary is the Board of directors.

Restriction on Holding Office in Multiple Companies:
Under Section 203(3) of the Companies Act, 2013, a company secretary shall not hold office in more than one company except the subsidiary company. In the given case, it is proposed to appoint the company secretary of Super Grip Tyres Limited as a company secretary of its associate company- BVM International Limited, simultaneously. Such appointment is not allowed under the Act as the company secretary cannot be appointed as a whole-time company secretary in more than one company except the subsidiary company.

CONCLUSION:

- All three companies—BVM International Limited, ABC (Private) Limited, and Super Grip Tyres Limited—are mandatorily required to appoint a whole-time Company Secretary based on their status and capital structure.
- Form DIR-12 must be filed by all three companies. However, only BVM International Limited and Super Grip Tyres Limited (being public companies) are required to file Form MGT-14 with the ROC.
- The Board of Directors is the competent authority to appoint the Company Secretary.
- The proposed appointment of the Company Secretary of Super Grip Tyres Limited as the Company Secretary of BVM International Limited (an associate company) simultaneously is not permissible under Section 203(3), as the exemption applies only to subsidiary companies, not associate companies.

Question-11 Happy Health Care Services Private Limited is one of the best in the field of medical and health services across the country. The company has been under scrutiny for its remuneration policies for Key Managerial Personnel (KMPs). The company has witnessed significant growth in the past five years and a profit-making entity, accompanied by substantial increases in the remuneration packages of its KMPs over the recent years. Shareholders have raised concerns about the appropriateness of these remuneration packages, questioning their alignment with company performance, shareholder value creation, and regulatory compliance. As a corporate governance expert, advise the shareholders in light of the provisions of the Companies Act, 2013, and relevant regulations regarding the statutory limits imposed on the remuneration of KMPs and the requirement of shareholders and creditors' approval thereto. Dec 2024 2017 Syllabus (4 marks)

Answer-11

FACTS:

- Happy Health Care Services Private Limited is a profit-making private company operating in the medical and health services sector.
- The company has shown significant growth in the last five years.
- There has been a substantial increase in the remuneration of Key Managerial Personnel (KMPs) in recent years.
- Shareholders have raised concerns regarding the appropriateness of these remuneration packages in terms of:
    - Alignment with company performance.
    - Shareholder value creation.
    - Regulatory compliance.

PROVISIONS:

- Section 197 of the Companies Act, 2013, imposes certain restrictions on the remuneration

payable to managerial personnel of a public company. The primary objective of this provision is to prevent excessive remuneration at the cost of shareholders' interests.

- The total managerial remuneration payable by a public company to its directors (including managing director and whole-time director) and its manager in respect of any financial year shall not exceed eleven percent of the net profits of the company for that financial year. Fees payable to directors under Section 197(5) are excluded from this limit.

- Net Profits Calculation: The method for calculating net profits is prescribed under Section 198 of the Act.

- Restrictions within the overall ceiling: Within the overall ceiling of 11% of net profits the internal ceiling on the remuneration of the Manager, MD and WTD have been prescribed as below:
    - In case of one MD, WTD or manager - 5% of the net profits of the company.
    - More than one Managing Director/ Whole time Director/Manager-10% of the net profits of the company together.
    - Directors who are neither MD/WTD or Manager-1% of the net profits of the company, if there is a MD/WTD or Manager and 3% if there is no MD/WTD or Manager.

- Shareholder Approval: If a company wishes to pay remuneration exceeding the 11 % limit, or the internal limits so specified as above it requires the approval of its shareholders through a special resolution. Where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.

- Limit on remuneration: If there is no profit or inadequate profit the remuneration to MD/WTD or Manager shall be paid in accordance with the provisions of schedule V of the Companies Act, 2013.
- Section 197 of the Companies Act, 2013, imposes certain restrictions on the remuneration payable to managerial personnel of a public company. However, these restrictions applies to a public company only. Private companies are free to appoint any person as managerial personnel and pay any amount of remuneration, subject to any restrictions in its Articles of Association.

CONCLUSION:

- Since Happy Health Care Services Private Limited is a private company, the statutory restrictions on managerial remuneration under Section 197 of the Companies Act, 2013 do not apply to it.
- There is no legal requirement under the Companies Act, 2013 for shareholder or creditor approval for paying high remuneration to KMPs in a private company, unless otherwise provided in its Articles of Association.
- However, shareholders' concerns regarding alignment with company performance and value creation are valid from a corporate governance perspective, even if not a statutory violation.

Question-12 Referring to the provisions of Companies Act, 2013 explain the further procedure to be followed in case the appointment of whole-time director was not made in the general meeting in accordance with the provisions of Schedule V of the Companies Act, 2013. Dec 2024 2017

Syllabus (4 marks)

Answer-12 1. According to Section 196(4) of the Companies Act, 2013, in case the provisions of Part I of Schedule V of Companies Act, 2013, are not fulfilled while appointing a whole-time director, an application seeking approval of Central Government for the appointment of whole- time director (WTD) shall be made in Form MR-2 along with the necessary fees payable under the Companies (Registration Offices and fess) Rules, 2014.
2. As per Section 201(2) of the Act, before an application is made by a company to the Central Government u/s 196 of the Act, there shall be issued by or on behalf of the company a General Notice to the members indicating the nature of application proposed to be made.
3. The company shall attach a copy of the Notice with the application together with certificate by the company as to due publication thereof.
4. The application shall be made within 90 days from the date of such appointment with regard to compliance of Section 196 of the Act. 5. A return of appointment of WTD is required to be filed with the ROC within 60 days of the appointment in form MR-1.

Question-13 Describe the disqualifications for a person to be appointed or to continue as a Managing Director, Whole-time Director, or Manager under the provisions of the Companies Act, 2013, read with the relevant conditions stipulated in Part I of Schedule V thereto. Dec 2024 2022 Syllabus (5 marks)

Answer-13 Disqualification of Managing Director, Whole-Time Director or Manager - Section 196
(3) of Companies Act 2013.
No company shall appoint or continue the employment of any person as managing director, whole-time director, or manager who −
(a) is below the age of twenty-one years or has attained the age of seventy years. However, the appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;
(b) is an undischarged insolvent or has at any time been adjudged as an insolvent; (c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or (d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

(Conditions to be fulfilled for the Appointment of Managing or Whole-Time Director or a Manager without the approval of the Central Government as Per Schedule V of the Companies Act, 2013 (Part I-Schedule V of the Companies Act, 2013)

No person shall be eligible for appointment as a managing or whole-time director or a manager of a company unless he satisfies the following conditions, namely:
(a) The person had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the Acts as specified under Schedule V of the Companies Act, 2013.
(b) The person had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Provided that where the Central Government has given its approval to the appointment of a person convicted

or detained mentioned above, as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.
(c) The person is resident of India.
(d) He has completed the age of 21 years and not attained the age of 70 years.

Other disqualifications: Further, the disqualification for appointment of director under Section 164 shall also be applicable to a person being appointed as a managing director or a whole-time director because they are essentially the director of the company.

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